

ICC91

Interstate Commerce Commission
1991 Annual Report



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LETTER OF TRANSMITTAL

April 4, 1992

To the Congress of the United States:

It is my pleasure to submit the one hundred and fifth Annual Report of the Interstate Commerce Commission.

The report covers the fiscal year ended September 30, 1991, except in the discussion of significant actions that transcend the 12-month period, or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the fiscal year appears in Appendix D.

Edward J. Philbin,
Chairman

THE COMMISSION

(As of September 30, 1991)

	Appointed	Term Expires Dec. 31
<i>Chairman</i>		
Edward J. Philbin (R) California	1990	1993
<i>Vice Chairman</i>		
Edward M. Emmett (R) Texas	1989	1992
<i>Commissioners</i>		
J. J. Simmons III (D) Oklahoma	1984	1995
Karen Borlaug Phillips (R) Virginia	1988	1996
Gail Clements McDonald (D) Oklahoma	1990	1994

During the fiscal year, President Bush reappointed Commissioner J. J. Simmons III, to another five-year term. The Senate confirmed the renomination on March 20, 1991, and Commissioner Simmons took his third oath-of-office on April 16, 1991, in a White House ceremony.

Also during the fiscal year, President Bush renominated Commissioner Karen Borlaug Phillips to another five-year term. She was confirmed by the Senate on November 22, 1991, and took her second oath-of-office on December 5, 1991.



The Commissioners: *From the left*, Commissioner Karen Borlaug Phillips, Vice Chairman Edward M. Emmett, Chairman Edward J. Philbin, Commissioner J. J. Simmons III, and Commissioner Gail Clements McDonald.

Functions and Responsibility

The Interstate Commerce Commission (ICC) is an independent Federal agency responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the ICC attempts to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 52,000 for-hire companies providing surface transportation in the U.S. Among these companies are railroads, trucking firms, bus lines, barge operations, one coal slurry pipeline, certain types of chemical pipelines, household goods movers, and freight forwarders of household goods.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC is authorized to have five Commissioners each with a five-year term of office.

How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate specific authority to the Commission's bureaus and offices.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies. In addition, the Chairman generally is responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and,
4. Development and utilization of effective, expert staff support for the

fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission and assumes the Chairman's duties during the Chairman's absence. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, and discipline of non-attorney Interstate Commerce Commission Practitioners.

During the Fiscal Year, the Commission's activities were carried out through an organizational structure consisting of the Commission's bureaus and offices, as follows:

Office of Compliance and Consumer Assistance: monitors the activities of ICC-regulated companies and rate bureaus to ensure compliance with the law administered by the ICC, and assists the public in the resolution of complaints against ICC-regulated companies.

Office of Congressional and Legislative Affairs develops and maintains cooperative relations with Congress; performs liaison activities with Congress to enhance understanding of Commission actions; responds to Congressional inquiries; and prepares testimony for presentation at Congressional hearings and written comments on proposed legislation for submission to Congress.

Office of Economics conducts economic and statistical analyses of the transportation industries and provides economic advice to the Commission. The Office determines and applies uniform accounting and reporting rules; reviews various financial reports; analyzes cost, economic, engineering, and financial evidence submitted by parties in cases before the Commission; compiles and publishes transportation statistics and cost studies; conducts audits of pertinent records of transportation firms; and ensures that energy

and environmental concerns are adequately assessed.

Office of External Affairs directs the intergovernmental, State and local government, constituent, public, industry, and media affairs for the Commission.

Office of the General Counsel renders legal opinions to the Commission, and defends Commission decisions challenged in court.

Office of Hearings is staffed by Administrative Law Judges and conducts various hearings as directed by the Commission.

Office of Human Relations manages the Commission's program to provide equal employment opportunity for all employees and applicants, and provides training in the area of human relations.

Office of Inspector General conducts independent internal audits and investigations of the Commission's operations.

Office of the Managing Director manages the Commission's day-to-day operations. This includes budget, personnel, administrative services, and systems development.

Office of Proceedings processes Commission cases pertaining to operating rights, financial matters, mergers,

rates, abandonments, and competitive practices.

Office of Public Assistance (Special Counsel) functions as a clearinghouse for resolution of small-business problems related to surface transportation regulation; advises the Commission on the nature and status of such problems; contributes to the public interest record in Commission cases; and assists individuals, consumer groups, small communities, small shippers, as well as transportation and public utility commission officials participating in those cases.

Office of the Secretary serves as the Commission's documentation center and clerk of the Commission. The Office's legal unit prepares procedural decisions and informal opinions. The Office is responsible for record keeping and the issuance of the Commission's decisions and other legal documents. The Office also administers the examination program for non-attorney practitioners and is involved in the acceptance of filings and the assignment of proceedings to the Commission's Bureau and Offices.

Bureau of Traffic monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they become effective.

FISCAL YEAR 1991 IN REVIEW

The Year in Review is a list of significant actions taken by the Commission during fiscal year 1991.

1990

OCTOBER

4 Commission finds that it, rather than the Federal Energy Regulatory Commission, has jurisdiction over the transportation of anhydrous ammonia by pipeline.

5 Commission approves the acquisition of the Delaware & Hudson Railway Company by D&H Corporation, which is controlled by Canadian Pacific Limited.

16 Commission increases the minimum rule amount for capitalization of railroad property units from \$2,000 to \$5,000.

22 Commission denies complaint of Society of Plastics Industry against railroad use of multiple independent factor through rates.

NOVEMBER

16 Commission finds Burlington Northern Railway Company and Norfolk Southern Corporation to be revenue adequate for 1989.

28 Commission authorizes Union Pacific to acquire trackage rights over the Chicago & North Western between Freemont, Nebraska, Council Bluffs, Iowa, and Chicago, Illinois.

DECEMBER

5 Commission denies reopening sought by complainant Shippers Committee OT-5 in its complaint against defendant railroad concerning supply and use of rail cars.

20 Commission exempts shipper Iowa Power, Inc.'s proposal to construct and operate a line of railroad to provide alternative rail access, subject to completion of the environmental review process.

28 Commission denies rail labor requests to revoke exemption granted to Wheeling Acquisition Corporation to acquire and operate 576 miles of rail line and 264 miles of incidental track-age rights from Norfolk & Western Railway Company and to Wertheim Schroder & Company to continue in control of the Wheeling & Lake Erie Railway Company.

1991

JANUARY

17 Commission adopts final rules prohibiting smoking on buses in scheduled intercity service or special operations.

FEBRUARY

15 Commission issues proposal to further refine the calculation of the productivity adjustment to the quarterly Rail Cost Adjustment Factor.

21 Commission exempts railroads from filing quotations for nonagricultural government traffic.

MAY

14 Commission releases a report on the continuing decline in rail rates since the passage of the Staggers Rail Act of 1980. The report concludes that the average inflation-adjusted rail rate level has fallen 24.6 percent since enactment of the Act. The overall rail rate declined 2.8 percent from 1988 to 1989, the most recent period which data are available.

21 Commission proposes to reduce the reporting burden on railroads by eliminating and revising certain schedules in Annual Report Form R-1 and by eliminating certain periodic report forms.

23 Commission submits two legislative proposals to Congress dealing with further deregulation of the motor carrier industry. One is a broad effort to streamline the ICC's regulatory responsibilities over the trucking industry while the other is less expansive and calls for

a one-year moratorium on rate tariff filing requirements for motor common carriers of property.

21 Commission issues a report in a consolidated fact-finding proceeding examining all aspects of motor carrier ratemaking. The report concludes that discounting reflects increased competition consistent with legislative goals and that coincident rate bureau and individual member carrier pricing often have no effect on prices in the highly competitive trucking industry.

JUNE

17 The Commission establishes a Tariff Public Reading Room to improve security of documents and to better serve the public's heightened interest in filed tariff matters.

20 Commission finds composite railroad industry cost of capital rate for 1990 to be 11.8 percent.

24 Commission adopts a revised standard for valuing certain privately-owned tank cars in determining allowances under national agreement.

JULY

1 Commission exempts the rail transportation of lumber, plywood and treated wood products from most regulation.

5 Commission grants the request of the Association of American Railroads to consider exempting from the Elkins Act non-transportation market development activities by railroads.

8 Commission issues a report concerning the adequacy of the Nation's railroad grain car supply. The report identifies six causes for car shortages and concludes that the issue of grain car supply and allocation can best be settled through private-sector negotiation. (See discussion of the report in the car service section of the Railroad Chapter.)

9 Commission requires carriers to submit maps for lines proposed to be

abandoned under the Commission's exemption procedures.

11 Commission authorizes American European Express, Inc., to provide rail passenger service over more than 1,000 miles of track between Chicago, Illinois, Washington, D.C., and New York, New York.

18 Commission finds that it does not have jurisdiction over the operations of the Napa Valley Wine Train, Inc.

30 Commission issues revised rules for the implementation of various environmental and energy laws.

AUGUST

13 Commission announces the availability of the 1990 Waybill Sample.

15 Commission determines the revenue adequacy level for the Nation's railroads and finds only one Class I carrier, the Illinois Central Railroad Company, to be revenue adequate for 1990.

21 Commission affirms its class exemption involving local and overhead trackage rights.

30 Commission declines to find *per se* unlawful the use by motor carriers of property of range of discount tariffs and shipper account codes in tariffs, rather it will address such tariffs on a case-by-case basis.

SEPTEMBER

4 Commission issues a decision affirming the availability of a rate reasonableness challenge as a direct defense to a motor carrier undercharge action, emphasizing the Commission's exclusive jurisdiction to determine rate reasonableness, and discussing criteria for making that determination.

10 Commission proposes to amend railroad classification regulations by raising the threshold for Class I status from \$50 million (1978 dollars) to \$250 million (1991 dollars) in adjusted annual operating revenues.

11 Commission proposes to repeal its regulations governing contracts for transportation by motor contract carriers of property.

13 Commission revises its safety fitness policy in both the licensing and finance

dockets to restrict only motor carriers holding "Unsatisfactory" U.S. Department of Transportation safety fitness ratings from receiving operating authority.



ADMINISTRATION

Organization and Management

During fiscal year 1991, there were no major changes in the Commission's organizational structure or management as the Commission continued to make the most efficient use of its resources in light of its changing regulatory role. The Commission's average staff-year employment stood at 630 for Fiscal Year 1991, a decrease of 35 from the prior fiscal year's average of 665.

Human Relations

During fiscal year 1991, the Office of Human Relations continued to monitor the Commission's equal employment opportunity (EEO) and human resource management programs. As part of the program, the Office of Human Relations provided training in the areas of handicap discrimination and sexual harassment. This training was conducted for all managers in the Commission's three regional offices, and for all employees in five field locations. The training provided an update regarding EEO regulations and emphasized the Commission's prohibition against sexual harassment in the workplace.

The Office of Human Relations continued to monitor Commission recruitment, hiring, and placement to ensure Commission compliance with Federal objectives for a representative work force. To this end, the Office of Human Relations prepared Commission reports to the Equal Employment Opportunity Commission and to the Office of Personnel Management in such areas as affirmative action programs for the hiring, placement, and advancement of handicapped persons; the disabled veterans affirmative action program; and the employment of minorities and women.

Commission Budget

The Commission's fiscal year 1993 budget was developed and submitted concurrently to the Office of Manage-

ment and Budget and the Congress in September 1991. The budget reflected a slightly increased staffing level of 13 for a total request of 649. This provided continuity of regulatory functions in the absence of the passage of legislation further deregulating the motor carrier industry, and the Commission's streamlined administrative procedures in motor freight, household goods, and railroad matters have further promoted efficient resource use.

Fiscal Year 1991 Appropriations

Commission funding for fiscal year 1991 was included in the Department of Transportation and Related Agencies Appropriations Act, 1991,¹ approved November 5, 1990, which authorized the following appropriations:

- **Salaries and Expenses:** For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed \$1,500 for official reception and representation expenses, \$43,777,000: Provided, That, joint board members and co-operating State commissioners may use Government transportation requests when traveling in connection with their official duties as such.
- **Directed Rail Service:** None of the funds provided in this Act shall be available for the execution of programs the obligation for which can reasonably be expected to exceed \$475,000 for directed rail service authorized under 49 U.S.C. 11125 or any other Act.
- **The FY 1991 Appropriation** was reduced to \$43,776,431 due to an OMB-imposed sequester against all discretionary spending of .0013 percent or \$569.

¹ Public Law 101-516.

**Salaries and Expenses
Appropriation**

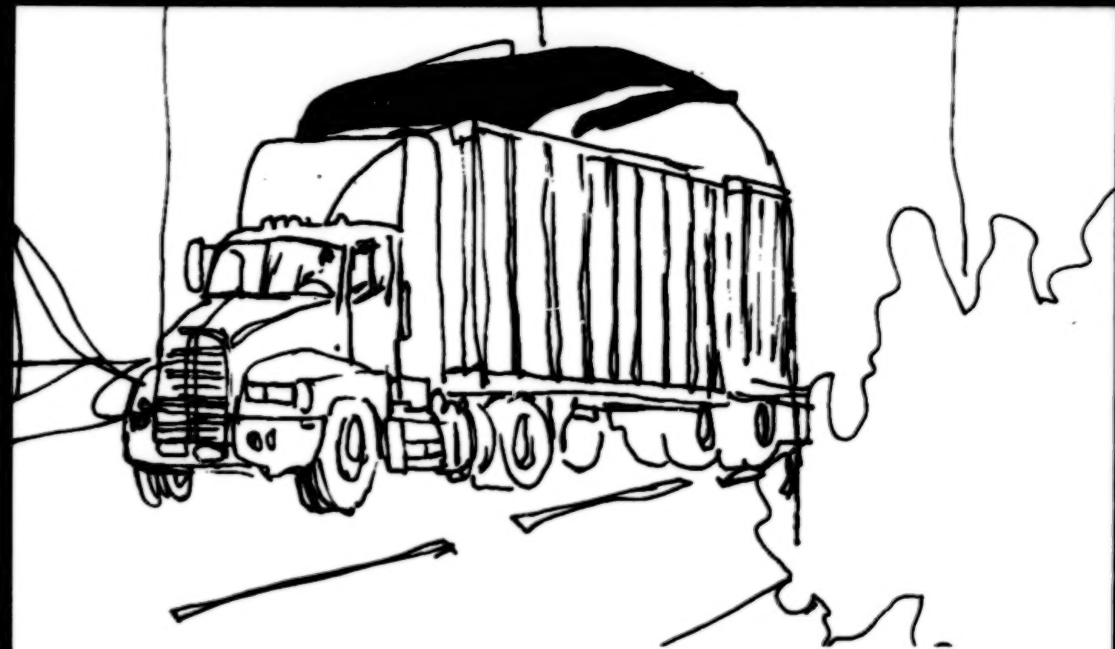
On February 27, 1991, Chairman Edward J. Philbin and staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify regarding the Commission's fiscal year 1992 budget request. The Chairman and staff supported the request to the Subcommittee on Transportation of the Senate Committee on Appropriations by responding on July 11, 1991, to a series of written questions in lieu of a hearing.

**Payments for Directed Rail
Service Appropriation**

The last instance of subsidized directed rail service occurred between October 5, 1979, and March 23, 1980, when the Kansas City Terminal Railway Company provided service over the lines of the Chicago, Rock Island, and Pacific Railway Company. The Congress last appropriated funds for this directed service in a fiscal year 1982 supplemental appropriation.

Since no new, subsidized directed rail service is anticipated, no funds were requested for fiscal year 1992.

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LEGISLATION

Hearings and Comments on Legislation

Intrastate Trucking. The Safe and Competitive Trucking Act of 1991 (H.R. 1064) was introduced in the House on February 21, 1991, by Congressman Dennis Hastert (R-IL). The bill was very similar to H.R. 4261 which had been introduced in the last Congress. H.R. 1064 limited the ability of individual states to impose economic regulation on the intrastate operations of interstate motor carriers. The Commission submitted written testimony in support of H.R. 1064 to the House Public Works Committee on March 10, 1991. Less extensive legislation was introduced in the Senate (S. 539) on March 5, 1991, by Senator Daniel Inouye (D-HI). The Commission submitted written testimony in support of H.R. 1064 to the House Public Works Committee on March 10, 1991. Language similar to the text of H.R. 1064 was included in the Administration's proposed legislation on Highway Reauthorization which was never acted upon and no action was taken on either H.R. 1064 or S. 539. However, H.R. 2950, the Intermodal Surface Transportation Efficiency Act of 1991, which was passed by the Congress on November 27, 1991, and signed by the President on December 18, 1991, included provisions comparable to some of those in H.R. 1064 dealing with the International Registration Plan and the International Fuel Tax Agreement.

Confirmation Hearings. On March 18, 1991, the Senate Commerce, Science, and Transportation Committee's Subcommittee on Surface Transportation held a hearing on the renomination of Commissioner J.J. Simmons III to be a Commissioner of the Interstate Commerce Commission. The nomination was reported favorably from the full Committee on March 19, 1991, and confirmed by the United States Senate on March 20, 1991.

Also, on August 1, 1991, Commissioner Karen Borlaug Phillips was renominated to serve as a Commissioner on the Commission, for a term expiring December 31, 1996. A November 19, 1991, hearing on her nomination was held by the Senate Committee on Commerce, Science, and Transportation. The nomination was confirmed by the United States Senate on November 22, 1991.

Revolving Door Amendment to Defense Authorization. On June 28, 1991, the Commission responded in writing to a request from Congressman John Dingell, Chairman of the House Energy and Commerce Committee, on a possible revolving door amendment to the Defense Authorization Act of 1991 (H.R. 2100). The proposed amendment was an attempt to clarify various post-employment activities or "revolving door" statutes that exist to deal with the governmental decisionmaking process regarding contracting and to eliminate overlapping or inconsistent statutes. It would have repealed some of the Department of Defense statutes affecting post-employment activities and expand them to cover all government agencies involved in contracting, including post-award contract activities. The amendment would have had little impact on the Commission because the Commission does not engage in research and development activities, nor does it engage in a significant amount of contracting activities. The Commission responded that its existing Canons of Conduct (49 C.F.R. 1000.735) and existing laws were adequate to protect the Agency's administration of contracts and that it was unnecessary to extend the revolving door policy to the Commission. The amendment was not included in the final legislation.

Rights of Disabled Individuals with Trained Animals. On July 3, 1991, the Commission submitted written comments on H.R. 2245, the Individuals With Disabilities' Trained Animals Parity Act

of 1991. The legislation, introduced on May 7, 1991, by Congressman Goodling (R-PA), would have amended certain Federal laws to grant persons with trained animals other than seeing-eye dogs the same rights granted to persons with seeing-eye dogs. A section of the bill would amend the Interstate Commerce Act to allow (but not compel) common carriers subject to Commission jurisdiction to permit animals trained to assist the disabled to accompany disabled passengers at no extra charge. The Commission supported the provision and recommended minor modifications to avoid favoring one form of disability over another, consistent with the policy expressed in the Americans with Disabilities Act (Public Law 101-336). The legislation was referred to the House Public Works and Transportation Committee and the House Veterans' Affairs Committee but no action was taken on the bill. However, Section 4011 of H.R. 2950, the Intermodal Surface Transportation Efficiency Act of 1991,¹ addresses the issue by amending 49 U.S.C. 10723(b)(2) to allow animals trained to assist blind, hearing impaired, or disabled individuals to accompany the individual at no extra charge.

Trucking Company Takeovers. On August 2, 1991, the Commission testified before the Senate Governmental Affairs Committee on the issue of trucking company takeovers and the failure of a number of general freight motor carriers since 1980. In question was whether the regulatory reform of the trucking industry contained in the Motor Carrier Act of 1980 was the reason for the large number of company failures in the industry. The Committee also examined the extent to which organized criminal activity was affecting the industry and whether the Commission should have more authority to examine potential entrants into the industry.

The Commission testified that the Commission does not currently have authority to inquire into non-transportation related criminal activities of potential purchasers or to examine their financial backgrounds, and did not deem it necessary to have the authority in order to prevent further failures. Other agencies, primarily the U.S. Department of Justice, are better suited to investigate and prosecute offenses in this area. No legislation was introduced on the issue.

Oversight Hearing on the Status of the Trucking Industry. On September 19, 1991, the Commission testified before the Senate Committee on Commerce, Science, and Transportation on the status of the trucking industry. Some of the issues discussed at the oversight hearing were the viability of the filed rate doctrine and the distinction between common and contract carriage, an assessment of the tariff system at the Commission, legislative solutions to the undercharge issue, financial issues, such as reporting requirements affecting the freight motor carrier industry, predatory pricing and "asset stripping", and an overall assessment of the industry since passage of the Motor Carrier Act of 1980.

The Commission testified that the Motor Carrier Act of 1980 and the reduction or elimination of economic regulation in other transportation modes have spurred tremendous competition in the motor carrier industry. Lower freight transportation rates, improved service and reliability, reduced costs of stocking and financing inventory for shippers, and increased trucking industry employment were some of the benefits of the Motor Carrier Act of 1980 cited in the Commission's testimony.

Negotiated Rates in the Motor Carrier Industry. On August 2, 1991, Senator Exon, with Senators Burns and Kasten, introduced the Negotiated Rates Equity Act of 1991 (S. 1675). The bill addressed the effect of the U.S. Su-

¹ Public Law 102-240.

preme Court's decision in *Maislin Industries, U.S., et al v. Primary Steel, Inc.*, 110 S.Ct. 2759 (1990), which overturned the Commission's previous negotiated rates policy. As a result, shippers would be required to pay tariff rates where carriers had failed to file tariffs reflecting the lower rates that had been negotiated. The legislation was referred to the Senate Committee on Commerce, Science, and Transportation and would have adopted a different approach than last year's proposed legislation (S. 2933 and H.R. 3242) to address the problem faced by shippers. S. 1675 would have allowed the Commission to use a rate comparability standard to determine that a filed rate was unreasonable to the extent that it exceeded comparable rates for like transportation or service. The Commission would have been required to institute simplified procedures for undercharge claims of less than \$10,000. The Commission testified in favor of the bill as introduced at the Senate Commerce Committee's September 19, 1991, trucking industry oversight hearing.

On November 4, 1991, Congressman Barney Frank (D-MA) introduced H.R. 3705, legislation substantially similar to S. 1675; the bill was referred to the House Public Works and Transportation Committee. No action had been taken on either piece of legislation at the end of the first session of the 102nd Congress.

Other Legislative Proposals

During the fiscal year, a number of legislative proposals were developed regarding regulation of the surface transportation industry. Some of these were monitored because they would have a direct impact on the Commission (if enacted) while others were monitored because of their potential impact on the transportation industry as a whole.

Trucking Deregulation. On May 23, 1991, a majority of the Commission

submitted to Congress two legislative proposals dealing with further deregulation of the trucking industry. One was a broad effort to streamline the ICC's regulatory responsibilities over the trucking industry while the other was less expansive and called for a one-year moratorium on rate tariff filing requirements for motor common carriers of property.

The broad legislative proposal, developed by Vice Chairman Emmett and Commissioner Phillips, would apply to all motor carriers of property other than household goods. It would streamline the licensing process for entry into the industry, eliminate tariff filing requirements and regulation for rates established by carriers independently of any motor carrier ratemaking organization, grant the Commission authority to exempt motor carriers from provisions of the Interstate Commerce Act, and require the states to regulate carriers licensed by the ICC in a manner consistent with ICC regulation.

The other proposal, drafted by Chairman Philbin, would establish a one-year moratorium on the filing of tariffs by motor common carriers of property, excluding household goods carriers. The ICC would be directed to analyze the impact of the moratorium upon the industry, to consult with the Departments of Transportation and Justice, as well as the Federal Trade Commission, and to report its findings to Congress, specifically addressing the continuing need for the statutory requirement that tariffs be filed with and enforced by the Commission. If the findings were that the filings no longer served any essential and beneficial purpose, permanent elimination could then be pursued. No action was taken on either proposal during the Fiscal Year.

Highway Reauthorization. On September 30, 1991, authorization of the Federal Highway program expired with legislation to reauthorize still pending. The Senate had passed its version (S.

1204) on June 19, 1991, and the House passed its version (H.R. 2950) on October 23, 1991. Conferences were held on the legislation and the Conference Report to H.R. 2950 (H. Rpt. 102-404), the Intermodal Surface Transportation Efficiency Act of 1991, was passed in the House of Representatives on November 26, 1991 in the United States Senate on November 27, 1991, and signed by the President on December 18, 1991.

Although the Commission would be affected minimally by the legislation, there are some provisions in the final legislation that directly affect Commission activities. One of these provisions is an amendment to 49 U.S.C. 11506 repealing the "bingo stamp" program authorized in 1965, and currently administered by the National Association of Regulatory Utility Commissioners (NARUC). The bill directs the ICC to promulgate regulations within 18 months of enactment, under which each motor carrier will pay an annual fee to a single state for registration of proof of insurance, and that state will distribute the collections to other participating states in which the carrier's vehicles operate. Distribution of the fees will be made according to the amounts paid in November, 1991, to each state under the existing program. The amendments to Section 11506 take effect on January 1, 1994. Also included in the bill was a requirement that after September 30, 1996, states must participate in the International Registration Plan if they desire to limit the operation of motor vehicles registered under the laws of a state that participates in the plan. In addition, the section prohibits states, after September 30, 1996, from imposing fuel use tax requirements not in conformity with the International Fuel Tax Agreement. The bill permits continuation of the Regional Fuel Tax Agreement currently in effect in Maine, New Hampshire, and Vermont.

Administrative Dispute Resolution Act. Late in the 101st Congress, legislation was cleared that would authorize federal agencies to use alternative dispute resolution techniques, including settlement negotiations, mediation, mini-trials, and arbitration to resolve administrative disputes. The legislation (H.R. 2497) became Public Law 101-552 on November 15, 1990. Section 11 of the law imposes a sunset date of October 1, 1995.² The Commission sought and received comments on its efforts to implement the Act for matters before the agency.

Negotiated Rulemaking Act of 1990. On November 29, 1990, the Negotiated Rulemaking Act of 1990 was signed into law (Public Law 101-648). This legislation establishes a statutory framework for agencies to use in negotiated rulemaking proceedings. It also encourages Federal agencies to use negotiation to improve the rulemaking process and to avoid costly and time-consuming litigation. Section 5 of the law imposes a sunset date of November 29, 1996.³

Independent Safety Board Act Amendments of 1990. On November 28, 1990, the President signed into law the Independent Safety Board Act Amendments of 1990, Public Law 101-641. Section 9 of that law, regarding Intercity Rail Passenger Service, was intended to overrule the August 10, 1990, decision by the Court of Appeals for the District of Columbia Circuit in

² To implement the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act, the Commission issued an advance notice of policy statement in Ex Parte No. 55 (Sub-No. 83, *Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Those in Which the Commission is a Party* (not printed), served March 5, 1991, and a notice of proposed rulemaking in the same case, (not printed) served December 11, 1991. There the Commission proposed to make broad use of Alternative Dispute Resolution procedures and Negotiated Rulemaking procedures.

³ *Ibid.*

Boston and Maine Corporation v. Interstate Commerce Commission, 911 F.2d 743 (D.C. Cir. 1990), *aff'd* 925 F.2d 427 (D.C. Cir. 1991). That opinion overturned an ICC decision authorizing Amtrak's request for condemnation of a 48-mile line of the Boston & Maine railroad, and Amtrak's subsequent resale of the line to the Central Vermont Railway.⁴ On October 7, 1991, the U.S. Supreme Court granted *certiorari* to review the Court of Appeals' decision. The Supreme Court is expected to rule on the case in 1992.

Improved Rural and Short-Line Railroad Service Act. On March 13, 1991, two similar pieces of legislation were introduced in the Senate and the House of Representatives to address the abandonment of railroad lines in rural areas of the country. Both bills, S. 641 and H.R. 1425, were entitled the Improved Rural and Short Line Railroad Service Act and were introduced by Senator Nancy Kassebaum (R-KS) and Congressman Pat Roberts (R-KS), respectively.

Although not identical, both of the bills sought to amend Sections 10903 through 10905 of the Interstate Commerce Act. Both would have required the Commission to consider, in ruling on an abandonment, whether the rail carrier had made a good faith effort to transfer or sell the subject line as a going concern railroad. Both bills also would have required the railroad to make financial and other information about the line available to governmental agencies or political subdivisions.

S. 641 was referred to the Senate Committee on Commerce, Science and Transportation while H.R. 1425 was referred to the House Energy and Commerce Committee. No action was taken on either bill.

Limitations on Railroad Abandonments in North Dakota. On October 28, 1991, the President signed the Department of Transportation and Related Agencies Appropriations Act for the Fiscal Year ending September 30, 1992 (Public Law No. 102-143). The law contained an amendment which narrowed the restriction on the Commission's processing of Burlington Northern abandonment applications in North Dakota, so that it no longer applied to exemptions of "out of service" rail lines. There had been a 350-mile limitation on Burlington Northern abandonments in North Dakota imposed by Section 402 of the Department of Transportation and Related Agencies Appropriations Act of 1982, Public Law No. 97-102, 95 Stat. 1442, 1465 (1981).

Striker Replacement Legislation. Bills were introduced in both the House and Senate to prohibit the hiring of permanent replacements for striking workers, if those workers were union-represented. The House passed H.R. 5 on July 17, 1991, and the Senate Labor and Human Resources Committee reported S. 55 to the Senate on July 18, 1991. No further action was taken on the measures.

Railroad Workers Unemployment Compensation. On October 7, 1991, Congressman Williams (D-MT) introduced H.R. 3511, A bill to provide extended unemployment benefits during periods of high unemployment to railroad employees who have less than 10 years of service. A related measure, S. 1828, was introduced in the Senate on October 8, 1991, by Senator Kennedy (D-MA). The House bill was referred to the House Committee on Energy and Commerce, while the Senate bill was referred to the Senate Committee on Labor and Human Resources. No action was taken on either bill.

Rail Safety. On June 11, 1991, Congressman Al Swift (D-WA), introduced H.R. 2607, the Rail Safety En-

⁴ *National Railroad Passenger Corporation v. Boston and Maine Corporation*, 112 S.Ct. 48 (October 7, 1991).

forcement and Review Act. This bill would authorize the activities which are under the Federal Railroad Safety Act of 1970 through fiscal year 1994 and was passed in the House on September 23, 1991. The Senate Commerce, Science and Transportation Subcommittee on Surface Transportation held a hearing on July 16, 1991, on the subject of rail safety but no legislation was introduced independently in the Senate. No further action was taken on the issue.

High Speed Rail. There was much activity in both Chambers on high-speed rail development in the transportation industry. In the House, two Committees approved bills dealing with the subject. H.R. 2941, introduced on July 18, 1991, by Congressman Valentine (D-NC), was approved by the House Science, Space and Technology Committee on November 7, 1991, and would authorize the Department of Transportation to spend funds through 1994 on research and development of magnetic levitation (maglev) and other high-speed rail projects. On the same day, the House Energy and Commerce Committee approved H.R. 1087 which had been introduced by Congressman Swift on February 21, 1991. This bill also promoted the development of high-speed rail systems. After it was approved by the House Energy and Commerce Committee, the bill was referred to the House Public Works and Transportation Committee for a period ending not later than February 28, 1992, for consideration of provisions that fall within the Public Works Committee's jurisdiction.

In the Senate, Senator Hollings (D-SC) introduced S. 811, the High Speed Rail Transportation Act of 1991, on April 11, 1991. This legislation would also require the Secretary of Transportation to coordinate efforts to develop maglev transportation technologies and

other high-speed rail transportation systems. The bill passed the Senate on October 22, 1991. The provisions of H.R. 1087 were included in the Intermodal Surface Transportation Efficiency Act of 1991, passed by Congress on November 27, 1991, and signed by the President on December 18, 1991.

Defense Production Act Reauthorization. The Defense Production Act provides the President with extraordinary authority during national security emergencies. Presidential authority over transportation resources is delegated to the Secretary of Transportation and re-delegated to the Chairman of the Interstate Commerce Commission for matters applicable to domestic surface transportation. Under the Defense Production Act, the Commission has the authority to issue Transport Mobilization Orders which become effective in the United States upon the proclamation of the existence of a national security emergency by the President or by concurrent resolution of the Congress. The war in the Persian Gulf served as the impetus for legislation reauthorizing and expanding the President's emergency authority to protect sources of material critical to national security needs. On August 17, 1991, the President signed a short-term bill (H.R. 991, Public Law 102-99) reauthorizing the Defense Production Act through September 30, 1991. Permanent legislation was still pending, awaiting conference (H.R. 3039 passed the House on October 2, 1991 and S. 347 passed the Senate on February 21, 1991) when Congress adjourned on November 27, 1991. However, on November 25, 1991, Congressman Carper (D-DE) introduced another temporary bill that would extend the date of the Act to March 1, 1992. The measure passed the House by voice vote on November 26, 1991, and the Senate by unanimous consent on November 27, 1991 clearing it for the President's signature.

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RAILROADS

Financial Condition

Revenues, earnings and traffic volume of the Class I line-haul railroads¹ declined during fiscal year 1991 compared to fiscal year 1990, reflecting the weakness in the Nation's economy. Operating revenues and revenue ton miles decreased during the period by 1.9 percent and 0.5 percent, respectively. Net railway operating income declined about 15 percent to \$2.2 billion and ordinary income fell 10.5 percent to \$2.1 billion. These earnings data exclude large accounting adjustments (special charges) taken by seven railroads to record major restructuring efforts to eliminate excess capacity, increase labor productivity, and increase balance sheet liabilities to cover potential for settlements of certain claims.

The declines during fiscal year 1991 have not been of the magnitude that would suggest a severe recession for the industry. Rather, they merely suggest a period of sluggish performance.

During fiscal year 1991, Class I line-haul rail employment decreased 4.5 percent to a monthly average of 209,200 employees, compared to a monthly average of about 219,000 employees during fiscal year 1990. Between passage of the Staggers Rail Act of 1980 and fiscal year 1991, rail industry employment levels declined about 55 percent.²

Securities

The issuance of securities and the assumption of liabilities are exempt from the prior approval requirements of

49 U.S.C. 11301 under the Commission's class exemption.³ Class II and III railroads are relieved of any filing requirement. Class I carriers are required to file a notice of exemption, and the regulations provide for Commission investigation upon the receipt of protests.⁴ Twelve unopposed notices of exemption were filed,⁵ but one was subsequently withdrawn.

The class exemption does not apply to transactions directly related to formal acquisition applications under 49 U.S.C. 10901 or 11343-11345. The Commission denied a petition by debenture holders to reopen the Union Pacific and Missouri-Kansas-Texas merger proceeding challenging the time period used for determining the allocation factor for calculating interest payments on debentures.⁶

Mergers, Consolidations, and Acquisitions

Intercarrier acquisitions. The Commission approved two formal applications for intercarrier acquisitions of rail lines this fiscal year. The Commission approved the acquisition of the assets of the Delaware & Hudson Railway Company (D&H), by D&H Corporation, a wholly owned subsidiary of Canadian Pacific (U.S.) Holdings, Inc., which is in turn a wholly owned subsidiary of Canadian Pacific Limited (CP). The acquisition places D&H within CP's corporate family. D&H, a Class II carrier operating approximately 1,500 miles of track in the northeastern United States, had suffered financial difficulties for several years. On June 20, 1988, it petitioned the U.S. Bankruptcy Court for the District of

¹ Railroad companies having adjusted annual operating revenues of \$50,000,000 or more for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification process.

² Revenues, earnings and traffic volume data are obtained from the *Quarterly Report of Revenues, Expenses and Income—Railroads* and *Quarterly Condensed Balance Sheet—Railroads*. Employment figures are from Form C: *Monthly Report of Employees of Class I Railroads*.

³ 49 CFR 1175 et seq.

⁴ 49 CFR 1175.1(b) and 1175.2.

⁵ Last year eleven unopposed notices were filed, but two were subsequently withdrawn.

⁶ Finance Docket No. 30800 (Sub-No. 29), *UP/MKT Merger—MKT Debentures*—"Available Income" Calculations (not printed), served November 27, 1990.

Delaware for reorganization. When the Bankruptcy Court solicited bids for the sale and/or reorganization of D&H, CP submitted two bids to purchase the D&H. The Bankruptcy Court approved CP's second bid on May 15, 1990, subject to the Commission's approval.

CP, through its CP Rail division, operates a 13,800-mile rail system in Canada and the states of Maine and Vermont. CP, a Class I railroad, controls the Soo Line Railroad Company, also a Class I rail carrier. CP also conducts motor carrier operations in the United States and Canada through its Canadian Pacific Express & Transport Ltd. division.

In addition to CP's acquisition of D&H, the Commission exempted the CP's acquisition of control of the Albany Port Railroad, Albany and Vermont Railroad Company, Saratoga and Schenectady Railroad Company, Wilkes-Barre Connecting Railroad Company, and Northern Coal and Iron Company, all of which were D&H subsidiaries.⁷ The Commission also approved CP's assignment, through D&H Corp., of D&H's trackage rights over several rail lines. In the second proceeding, the Commission authorized Gulf & Ohio Railways, Inc., to purchase or lease 77 miles of segmented track.⁸

During the year, the class exemption for acquisition or continuance in control of a nonconnecting carrier⁹ was used in 16 instances. In addition, the Commission granted eight petitions for exemptions for intercarrier acquisitions. The most significant of these involved the acquisition by CSX Transportation, Inc. (CSXT), of the Pittsburgh & Lake Erie's (P&LE) 61-mile main line between Sinns and West Pittsburgh, Pennsylvania. The

transaction was expected to alleviate P&LE's financial difficulties and ensure CSXT's continued and uninterrupted use of this line over which it has trackage rights. Simultaneously with the purchase, CSXT will lease the same line back to P&LE on a non-exclusive basis.¹⁰

Rail common control. "Common control" exists when a carrier or noncarrier that already controls one carrier obtains control of another, usually when an existing corporate nonrailroad subsidiary acquires a rail line and becomes a railroad. Sometimes the request for common control is unrelated to the acquisition of rail assets, as in the case of the Illinois Central Corporation and Illinois Central Railroad Company offered to acquire the stock of MidSouth and its rail carrier subsidiaries. That offer was subsequently withdrawn and the proceeding was discontinued.¹¹

Additionally, a significant number of requests for common control were filed as petitions for exemption. One reason for the increase was a consolidation of short line carriers under common management.

Interlocking directorates. The Commission's class exemption of interlocking directorates has eliminated most of these cases. Only one was filed this year. The Commission found that an individual who held the position of officer or director in several carriers affiliated with the Metropolitan Transportation Authority was exempt from Commission regulation and dismissed the application.¹²

⁷ *Canadian Pacific Ltd.—Pur. & Trackage Rights—D&H Ry. Co.*, 7 I.C.C.2d 95 (1990).

⁸ Finance Docket No. 31693, *Gulf & Ohio Railways, Inc.—Purchase and Lease—CSX Transportation, Inc. Line Between Thomasville and Sylvester, GA* (not printed), served November 6, 1990.

⁹ 49 CFR 1180.2(d)(2).

¹⁰ Finance Docket No. 31827, *CSX Transportation, Inc.—Acquisition and Lease Exemption—The Pittsburgh and Lake Erie Railroad Company* (not printed), served June 28, 1991.

¹¹ Finance Docket No. 31801, *Illinois Central Corporation and Illinois Central Railroad Company—Control—MidSouth Corporation, MidSouth Rail Corporation, MidLouisiana Rail Corporation, and SouthRail Corporation* (not printed), served May 10, 1991.

¹² Finance Docket No. 31800, *In the Matter of Stanley Brezenoff* (not printed), served January 22, 1991. *Canadian Pacific Ltd.—Pur. & Trackage Rights—D&H Ry. Co.*, 7 I.C.C.2d 95 (1990).

Transactions within a corporate family. This class exemption¹³ for transactions by members of a single corporate family that do not result in adverse changes in service, operations, or competition was used seven times this year.

Trackage rights. The Commission granted seven formal applications for trackage rights. One of these involved applications filed by the Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP), and Chicago and North Western Transportation Company (CNW) seeking authority for UP to acquire trackage rights over the lines of CNW between Fremont, Nebraska, Council Bluffs, Iowa, and Chicago, Illinois. In consideration of a \$100 million equity investment in CNW's parent company, Chicago and North Western Holdings Corp., and UP contracted for the trackage rights under agreements related to the acquisition of control over CNW by Blackstone Capital Partners. The Commission granted the trackage rights applications and applicants' request for a declaratory order,¹⁴ finding that neither the trackage rights nor the stock and common director relationship between the parent corporations would create a common control situation within the meaning of 49 U.S.C. 11343(a) nor did they require Commission approval under 49 U.S.C. 11322.

In another of these proceedings, the Commission approved Southeast Kansas Railroad Company's application for trackage rights and a lease over 35 miles of noncontiguous MP line segments owned in Kansas and Oklahoma.¹⁵

The class exemption for acquisitions and renewals of trackage rights¹⁶ exempts from formal review trackage rights based on written agreements that are not filed or sought in responsive applications in rail consolidation proceedings. This exemption was used 46 times this fiscal year. Two notices filed under the class exemption were dismissed, one because the changes were too minor to require Commission approval¹⁷ and the other because the Commission lacked jurisdiction.¹⁸ One notice was discontinued at the request of the carrier.¹⁹ Another was rejected because the transaction appeared to be a lease and not a trackage rights agreement.²⁰ The Commission affirmed the rejection, noting that the carrier granting another carrier use of its lines also relinquished its right to operate over the line, resulting in the purchaser obtaining sole and exclusive control of operations. Accordingly, the transaction was not properly characterized as only involving trackage rights.²¹

The Commission declined to revoke a trackage rights class exemption

¹³ 49 CFR 1180.2(d)(7).

¹⁴ Finance Docket No. 30937 (Sub-No. 1), *Chicago and North Western Transportation Company and Western Railroad Properties, Incorporated—Operation Exemption—Between South Morril, NE, and Caballo Junction, WY; and Finance Docket No. 29332 (Sub-No. 1), Western Railroad Properties, Incorporated—Trackage Rights Exemption—Union Pacific Railroad Company* (not printed), served February 19, 1991.

¹⁵ Finance Docket No. 31829, *Maine Central Railroad Company/Springfield Terminal Railroad Company—Trackage Rights—State of Maine Department of Transportation* (not printed), served May 24, 1991.

¹⁶ Finance Docket No. 31732, *The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights Exemption—Grand Boulevard Spur* (not printed), served November 8, 1990.

¹⁷ Finance Docket No. 31776, *Indiana Hi-Rail Corporation—Trackage Rights—Spencerville and Elgin Railroad* (not printed), served November 29, 1990.

¹⁸ Finance Docket No. 31776, *Indiana Hi-Rail Corporation—Trackage Rights—Spencerville and Elgin Railroad* (not printed), served April 12, 1991.

¹³ 49 CFR 1180.2(d)(3).

¹⁴ *Union Pacific R.R. Et Al—Trackage Rights Over CNW*, 7 I.C.C.2d 177 (1990).

¹⁵ Finance Docket No. 31678, *Southeast Kansas Railroad Company—Lease and Trackage Rights—Missouri Pacific Railroad Company Lines in Kansas and Oklahoma* (not printed), served October 19, 1990.

involving local and overhead trackage rights that had been acquired from a major, line-haul railroad by a smaller-railroad handling predominantly interchange of cars and industrial switching in a metropolitan area.²²

Inter-carrier leases. Two formal applications to lease and three exemption requests were granted this year. Kyle Railroad Company was granted formal authority to lease 346.747 miles of Missouri Pacific and Union Pacific (UP) rail lines, known as the Northern Kansas Rail lines, and to acquire trackage rights over 12.68 miles of UP track known as the Salina Subdivision. The Commission did not find that the lease would have anti-competitive effects.²³ In the second application, Southeast Kansas Railroad Company was authorized to lease 32 miles of MP track.²⁴ Additionally, three exemptions were approved for two leases²⁵ and for a 300-mile track lease.²⁶

New Carriers. Acquisitions of rail lines by noncarriers under the Commission's class exemption from 49 U.S.C. 10901²⁷ increased from last fiscal year.

Of the 50 notices filed, 48 were granted and two were dismissed.

Modified certificates of public convenience and necessity.²⁸ The Commission authorized nine new operators this fiscal year, compared with only four last fiscal year. These certificates are issued to operators of abandoned lines or lines proposed for abandonment that have been acquired by state or local government entities. Under the modified certificate, an operator may terminate service by providing 60 days public notice and need not seek additional abandonment authority.

The Feeder Line Development Program. This program is designed to prevent downgrading or abandonment of lines. The Commission can force carriers to sell lines they identify for abandonment on their system diagram map and any other line on which existing service is inadequate, if two conditions are met. The purchaser must pay the constitutional minimum price for the line and guarantee adequate service for at least three years.

The Commission denied a petition to reopen a feeder line application proceeding. The petitioning parties contended: (1) that the feeder line statute did not authorize purchases by carriers not affiliated with government or a shipper group; (2) that a finding of public convenience and necessity was not required in all feeder line cases because the statute establishes alternative criteria of either public convenience and necessity or publication on a system diagram map that showed potential for abandonment; and (3) the statute gave the Commission no discretion regarding the use of the Commission's exemption procedures for feeder line carriers. The Commission affirmed that the statute authorizes purchases by carriers not affiliated with a government or a shipper group;

²² Minnesota Comm. Ry., Inc.—Trackage Exemption—BN RR. Co., 8 I.C.C.2d 31 (1991).

²³ Finance Docket No. 31754, Kyle Railroad Company—Lease and Trackage Rights—Missouri Pacific Railroad Company and Union Pacific Railroad Company Northern Kansas Rail Lines (not printed), served April 5, 1991.

²⁴ Finance Docket No. 31678, Southeast Kansas Railroad Company—Lease and Trackage Rights—Missouri Pacific Railroad Company Lines in Kansas and Oklahoma (not printed), served October 19, 1990.

²⁵ Finance Docket No. 31656 (Sub-No. 1), Joppa and Eastern Railroad Co.—Petition for Exemption—Lease—Missouri Pacific Railroad Company (not printed), served May 16, 1991, and Finance Docket No. 31783, Manufacturers' Junction Railway Company—Lease and Operation Exemption—Missouri Pacific Railroad Company (not printed), served March 6, 1991.

²⁶ Finance Docket No. 31798, Ogeechee Railway Company—Lease and Operation Exemption—The South Western Rail Road Company; Central of Georgia Railroad Company—Discontinuance Exemption—In Peach and Houston Counties, GA (not printed), served March 22, 1991.

²⁷ 49 CFR 1150, Subpart D.

²⁸ See 1150 Subpart C.

that a new finding of public convenience and necessity is not required in feeder line cases; and that the Commission could not negate the feeder line carrier's exemption election.²⁹

The Commission dismissed the feeder line application of PSI Energy, Inc., and Indiana Electric Public Utility Corporation, to acquire 11 miles of track in Indiana.³⁰ In 1975, the United States Railway Association had given the line's predecessor owner, the Penn Central Transportation Co., permission to discontinue service over the line pursuant to its authority under the Regional Rail Reorganization Act.³¹ The Commission found that before PSI can make its feeder line application, it must procure an order from the Commission vacating the discontinuance and directing the restoration of service.

The Commission also rejected a noncarrier feeder line application for failure to correct major substantive deficiencies in its operating plan, its calculation of its net liquidation value or going concern value, and its evidence of financial responsibility.³²

The Commission rescinded the regulations that implement section 213 of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982. Section 213 provided that a financially responsible person, whose offer to acquire from a carrier in liquidation a rail line over which the carrier was providing no service was rejected by

the bankruptcy trustee, could apply to the Commission for approval of the proposed acquisition of the line. No carriers remain subject to this Act, which rendered the regulations obsolete.³³ The Commission also rescinded its competitive bidding regulations,³⁴ because the statutory basis³⁵ for the regulations was repealed.³⁶ Finally, the Commission made technical amendments to its acquisition, control, merger, trackage rights and lease regulations³⁷ to streamline them.³⁸

Labor Issues

Cases involving the Commission's authority involving labor issues continued to play a prominent role in the agency's workload.

The Commission reviewed and reversed an arbitration award providing protective benefits for employees who had been dismissed or displaced more than a year before the Commission authorized an abandonment exemption.³⁹ The Commission found that the employees were deprived of work when the carrier rerouted the traffic from this line to another line, and that the carrier sought the abandonment exemption much later. In vacating the award and remanding the case to the parties for further negotiation or arbitration, the Commission emphasized that the arbitrator had failed to make an independent finding that the rerouting was in anticipation of the aban-

²⁹ Finance Docket No. 31377, *Wyoming Colorado Railroad, Inc.—Feeder Line Acquisition—Union Pacific Railroad Company Line Between Ontario and Burns, Oregon* (not printed), served September 3, 1991.

³⁰ *PSI Energy, Inc.—Feeder Line—Norfolk Southern Corp.*, 7 I.C.C.2d 227 (1991).

³¹ Public Law 93-236, 384 Supp. 895 (September 30, 1974).

³² Finance Docket No. 31823, *Kansas Southern Railway Company—Feeder Line Application—The Atchison, Topeka and Santa Fe Railway Company* (not printed), served September 4, 1991.

³³ *Removal of Regulations—Bankrupt Railroad Service*, 7 I.C.C.2d 369 (1991).

³⁴ *Removal of Competitive Bidding Regulations*, 7 I.C.C.2d 361 (1991).

³⁵ Clayton Act §10, 15 U.S.C. 20.

³⁶ Antitrust Amendments Act, Pub.L. No. 101-588; 104 Stat. 2879 (1990).

³⁷ 49 CFR Part 1180.

³⁸ *Railroad Acquisition, Control, Merger, Consolidation Project, Trackage Rights, and Lease Procedures*, 8 I.C.C.2d 10 (1991).

³⁹ Finance Docket No. 31566, *The Baltimore and Ohio R.R. Co.—Exempt—Abandonment in Harrison, Doddridge, Ritchie, and Wood Counties, WV* (not printed), served December 3, 1990.

donment and had incorrectly inferred that the rerouting and abandonment were intertwined. The Commission concluded that the arbitrator had misinterpreted Commission standards regarding the abandonment and had misunderstood the reasons for imposing labor protective conditions in this case.

In its 1990 decision in *Wilmington Terminal*,⁴⁰ the agency found that, for line sales, the buying and selling carriers are not required to negotiate a single, "umbrella" implementing agreement with affected employees and that the buyer need not assume the collective bargaining agreements of the seller. In making this finding, the agency overruled, in part, its earlier decision in *Brandywine*,⁴¹ which had required such an umbrella agreement. Nonetheless, the Commission denied petitions to reopen and to review an arbitral award in *Brandywine* finding it unnecessary to overturn what it characterized as a "one-time" decision that will not recur.⁴²

In three other proceedings, in which petitions for review of an arbitration award were filed, the Commission refused to hold the proceedings in abeyance, pending judicial review of the *Brandywine* and *Wilmington Terminal* decisions.⁴³ Noting that the issues raised by petitioners had previously been resolved in *Brandywine*

and *Wilmington Terminal*, the Commission also declined to review the respective arbitration awards.

The Commission also denied requests in three proceedings for declaratory orders on issues arising out of Commission imposed labor protective conditions.⁴⁴ The Commission deferred to the negotiation and arbitration process, expressing the hope that these matters could be resolved without regulatory intervention. Similarly, the Commission dismissed two petitions⁴⁵ seeking interpretation of Commission imposed labor protective conditions without prejudice to subsequent arbitral review, subject to the *Lace Curtain* standards.⁴⁶ The agency noted that the issues raised were matters related to implementing agreements which should be resolved by arbitration.

The Commission declined to review an appeal of an arbitration award arising out of the consolidation of work territories of two separate railroads.⁴⁷ It determined that while its jurisdiction to consider the appeal extended to the issues raised, the situation presented failed to qualify for Commission review under its *Lace Curtain* standards.

⁴⁰ *Wilmington Terminal R.R., Inc.—Pur. & Lease—CSX Transp., Inc.*, 61 C.C.2d 799 (1990), *aff'd sub nom. RLEA v. ICC*, 930 F.2d 511 (6th Cir. 1991).

⁴¹ *Brandywine Valley R. Co.—Pur.—CSX Transp., Inc.*, 51 C.C.2d 764 (1989).

⁴² Finance Docket No. 31393, et al., *Brandywine Valley R. Co.—Pur.—CSX Transp., Inc.* (not printed), served December 13, 1990.

⁴³ Finance Docket No. 31388 (Sub-No. 1), et al., *R. J. Corman Railroad Co./Memphis Line—Put. & Lease—CSX Transp., Inc. Line Between Warwick and Uhrichsville, OH* (not printed), served March 21, 1991; Finance Docket No. 31445, *Indiana Hi-Rail Corporation—Pur.—CSX Transp., Inc. Line Between Richmond, IN and Fernald, OH* (not printed), served April 9, 1991; and Finance Docket No. 31487, *Natchez Trace Railroad—Pur. & Lease—CSX Lines Between Wellington and Anniston, AL and Talladega and Gantt's Jct. AL* (not printed), served April 29, 1991.

⁴⁴ Finance Docket No. 28583 (Sub-No. 26), *Burlington Northern, Inc.—Control and Merger—St. Louis-San Francisco Ry. Co.* (not printed), served April 25, 1991; Finance Docket No. 21478 (Sub-No. 14), *Great Northern Pacific & Burlington Northern Ry.—In Re D. E. Zevenino, D. J. Cooke and R. G. Heurung* (not printed), served May 29, 1991; and Finance Docket No. 28799 (Sub-No. 1), *St. Louis Southwestern Ry. Co.—Pur. (Portion)—William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific R.R. Co., Debtor* (not printed), served June 11, 1991.

⁴⁵ Finance Docket No. 31522 (Sub-No. 10), *Rio Grand Industries, Et Al.—Pur. & Track—CMW Ry Co. Petitions for Declaratory Orders and Clarification* (not printed), served November 16, 1990.

⁴⁶ *Chicago & North Western Tptn. Co.—Abandonment*, 31 C.C.2d 729 (1987), *aff'd sub nom. International Bhd. of Elec. Workers v. ICC*, 862 F.2d 330 (D.C. Cir. 1988).

⁴⁷ Finance Docket No. 29709 (Sub-No. 1), *Grand Trunk Western R.R. Co.—Merger—Detroit and Toledo Shore Line R.R. Co.* (not printed), served August 19, 1991.

Finding that petitioner had failed to demonstrate egregious error, the Commission declined to review an arbitral board's conclusion that an employee's displacement was caused by general business conditions rather than a transaction approved by the Commission.⁴⁸ The Commission concluded that petitioner had shown no more than ambiguity in his status, noting that the finding reached by the board was also reasonable.

The Commission also denied a request to reopen and reconsider an earlier decision dismissing a complaint alleging improper exclusion of overtime earnings in the computation of displacement allowances authorized under the *New York Dock* conditions.⁴⁹ The dispute was found to be essentially a factual matter concerning the calculation of individual benefits within the arbitrator's special dispute disposition role.⁵⁰ The Commission noted that regardless of the type of *New York Dock* benefit involved, disputes relating to the calculation of average monthly compensation are appropriate subjects for arbitration.

In another proceeding, the Commission found that defendant carriers had improperly consummated an acquisition transaction without obtaining prior Commission approval. The Commission retroactively exempted the transaction from prior Commission approval. The agency imposed labor protective conditions on both vendor carrier and the corporate parent of the vendor, which was not a party to the transaction. The Commission acknowledged that, although labor protective conditions are normally imposed only

for the benefit of employees of rail carriers that are parties to a transaction, an exception exists where employees of non-party carriers are actually performing work on the line. The agency found that employees of the corporate parent had been performing the operations on the tracks prior to the sale and, thus, were directly affected by the transaction and entitled to labor protective conditions.⁵¹

The Commission reviewed and approved a second arbitral award imposing an implementing agreement on the Springfield Terminal Railroad transactions. In declining to vacate the award, the Commission concluded that the arbitrator had jurisdiction to formulate the implementing agreement, had not exceeded the authority vested in him, and had acted lawfully. The Commission found the implementing agreement as a whole to be a reasonable and equitable accommodation of the various conflicting interests necessary to permit resumption of the authorized transactions. The Commission affirmed the arbitrator's authority to modify existing CBAs with respect to selection of forces and assignment of employees to the extent necessary to implement the Commission approved transactions. In a subsequent clarification, the Commission determined that carrier employees who elected to work for Amtrak on or before November 3, 1986, were not adversely affected by the lease transactions. Accordingly, they were not eligible to receive the benefits of the labor protective conditions imposed by the Commission in these proceedings.⁵²

⁴⁸ Finance Docket No. 30964 (Sub-No. 1), *Brotherhood of Maintenance of Way Employees v. Union Pacific R.R. Co.* (Arbitration Review) (not printed), served March 27, 1991.

⁴⁹ *New York Dock Ry.—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979).

⁵⁰ Finance Docket No. 28905 (Sub-No. 24), *American Train Dispatchers Ass'n. v. CSX Transportation, Inc.* (not printed), served November 19, 1990.

⁵¹ Finance Docket No. 31643, et al., *United Transp. Union v. Southern Pacific Transp. Co. et al.* (not printed), served November 5, 1990.

⁵² Finance Docket No. 30965 (Sub-No. 1), et al., *D&H Ry.—Lease & Trackage Rgts. Exempt.—Springfield Term.* (not printed), served October 4, 1990, clarification served May 24, 1991, (corrected decision served June 6, 1991).

The Commission also investigated whether the Springfield Terminal had properly complied with the employee protective conditions relating to the processing and payment of employee claims. Last year, the Commission found the carrier's method of processing employee claims to be obstructive and unacceptable. This year, the Commission denied rail labor petitions for reconsideration of certain aspects of its prior decision.⁵³

Rail Labor unsuccessfully challenged Commission findings that (1) the carrier's practice of denying claims by use of form letters that failed to specify the reasons for the denial did not constitute a default by the carrier requiring automatic allowance of the employee claim, and (2) employees who refused offers of employment from the carrier were not entitled to receive protective "make-whole" benefits for periods during which they had voluntarily made themselves unavailable for work. In addition, the Commission adopted the recommendations of the Commission's Chief Administrative Law Judge, who had been assigned responsibility for examining the claims process, and directed that he monitor implementation of his recommendations and report back to the Commission as necessary. Finally, the Commission denied an emergency petition to refer all matters relating to carrier compliance with the labor protective provisions and implementation of the arbitrator's award to the arbitrator.

Subsequently, the Commission concluded that, under the unique circumstances of this case, employees who had participated in a work stoppage did not forfeit their entitlement to Commission imposed labor protective benefits. Rail employees were cautioned that work stoppages deemed by the Commission to undermine the im-

plementing agreement process may expose participants to the risk of forfeiting their eligibility to receive such benefits.⁵⁴

In subsequent decisions, the Commission ruled that under the modified *Mendocino*⁵⁵ labor protective conditions imposed on the Springfield Terminal transactions, adversely affected employees were entitled to a maximum of 75 days of make-whole payments, including fringe benefits, plus up to 6 years of protective-period benefits. Also, the Commission ruled that it has the authority to require the carrier to establish an escrow fund to ensure the availability of sufficient resources to satisfy employee claims. The agency found no need to impose such a requirement in this case.⁵⁶

Short Line and Regional Railroads

Since 1978, the number of short line carriers is estimated to have increased by over 65 percent.⁵⁷ Short line carriers are financially strong and are contributing to the economic health of line haul carriers by preserving their feeder traffic and assuming maintenance and property tax liabilities. Short line operations now generate more than 8 percent of the nation's total rail freight traffic.⁵⁸

Shippers benefit from new short line operations through the preservation or improvement of rail service. Short line carriers can preserve service through their lower costs and more effi-

⁵³ Finance Docket No. 30965 (Sub-Nos. 1 & 2), *D&H Ry.—Lease & Trackage Rights Exempt.—Springfield Term.* (not printed), served December 11, 1990.

⁵⁴ *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

⁵⁵ Finance Docket No. 30965 (Sub-Nos. 1 & 2), *D&H Ry.—Lease & Trackage Rights Exempt.—Springfield Term.* (decisions not printed), served April 2, 1991, April 9, 1991, and July 5, 1991.

⁵⁷ Based on membership statistics provided by the American Short Line Railroad Association, Washington, DC.

⁵⁸ Based on industry estimates.

⁵³ Finance Docket No. 30965, et al., *D&H Ry.—Lease & Trackage Rights Exempt.—Springfield Term.* (not printed), served November 15, 1990.

cient operations. Many can afford to make single car deliveries or offer service on a more frequent basis. This makes rail service more accessible and practical for many shippers and more competitive with motor carriers.

During fiscal year 1991, the Commission authorized 20 new short line operations over 2,443 miles of track either purchased or leased from Class I railroads. Another 18 sales under the Commission's class exemption involved both new carriers and existing short line carriers. The Commission also authorized several requests for common control of short lines, which might result from these acquisitions, and the extension of short line operations through trackage rights. These figures do not include new short lines created when State and local governments purchase abandoned lines under special procedures or lines proposed for abandonment acquired under the Commission's forced sale regulations.

There have been few abandonments by short line carriers. Research in response to a congressional inquiry revealed that as of January 15, 1991, only 10 of 241 carriers authorized since 1986 had filed for abandonment authority. Only one abandoned its entire line.

During the fiscal year, two regional carriers that were approaching the Class I carrier revenue threshold proposed to raise the revenue levels for Class I status. The Commission temporarily excepted them⁵⁹ and another carrier⁶⁰ from Class I accounting and reporting requirements. Noting that regional carriers are materially different from Class I trunk line carriers, the Com-

mission proposed, in a rulemaking proceeding, to raise the Class I carrier revenue threshold level to \$250 million.⁶¹

Abandonments

During fiscal year 1991, the Commission authorized the abandonment or discontinuance of service for 1,883 miles of trackage, an increase over the 1,607 miles granted in fiscal year 1990. Requests for Commission authority to abandon track or discontinue service fall into one of five categories:⁶² (1) a formal abandonment application under 49 U.S.C. 10903,⁶³ (2) a summary (short form) application,⁶⁴ (3) an adverse abandonment application filed by a party other than a railroad,⁶⁵ (4) a two-year out-of-service notice of exemption,⁶⁶ and (5) a petition for exemption under 49 U.S.C. 10505 from formal review.⁶⁷ Formal, summary, and adverse abandonment applications are filed under the Commission's formal abandonment regulations.⁶⁸

Formal applications for abandonment. In reviewing abandonment applications, the Commission considers, among other things, whether the line is a burden on interstate commerce which occurs when the line does not earn

⁵⁹ Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition for Rulemaking with Respect to 49 CFR 1201* (not printed), served September 10, 1991.

⁶⁰ Additionally, Conrail may still obtain automatic approval of abandonments under the Northeast Rail Service Act of 1981 (NERSA) for lines previously designated as generating insufficient revenue. Conrail did not use this procedure this year. Only 31 designated lines remain.

⁶¹ 49 CFR 1152.22.

⁶² 49 CFR 1152.23.

⁶³ All adverse abandonment applications must follow the Commission's formal application procedures at 49 CFR 1152.22.

⁶⁴ 49 CFR 1152.50.

⁶⁵ The Commission reissued and clarified its procedures for all rail exemption petitions in *Rail Exemption Procedures*, 8 I.C.C.2d 114 (1991), which are now codified at 49 CFR Part 1121.

⁶⁶ 49 CFR, Part 1152.

⁵⁹ Ex Parte No. 492 (Sub-No. 1), *Montana Rail Link, Inc., and Wisconsin Central Ltd., Petition for Temporary Accounting and Reporting Exception from 49 CFR 1201* (not printed), served February 4, 1991.

⁶⁰ Ex Parte 492 (Sub-No. 2), *Western Rail Properties, Inc., Verified Petition for Temporary Exception or Waiver from 49 CFR Section 1201* (not printed), served April 15, 1991.

enough money to cover the cost of providing service.⁶⁹ In some cases, the line does not even earn enough revenue to cover the cost of operations.⁷⁰ The Commission may conduct separate analyses into different segments of the line to be abandoned.⁷¹ In deciding whether to grant an application to abandon a line, the Commission considers the availability of adequate transportation alternatives.⁷²

Unopposed applications must be granted within 30 days of filing under 49 U.S.C. 10904(b). In opposed proceedings, the Commission is required to issue a final decision on the merits by the 255th day after the application is filed. Only in exceptional circumstances has the Commission been required to extend its consideration of an application for a longer period. One such case occurred this year when the Commission reopened the record regarding SouthRail Corporation's proposed abandonment of a line in Mississippi and Alabama to receive additional evidence. Subsequently, the Commission affirmed its statutory authority to reopen a proceeding for additional evidence despite the deadline.⁷³

If a carrier anticipates little or no opposition, it may file a summary application, which allows the carrier to omit certain documentation.⁷⁴ However, if substantial opposition develops, the Commission will require the carrier to proceed under its long-form abandonment procedures.⁷⁵

The Commission encourages public participation in its abandonment proceedings. To encourage small shipper participation, extensive carrier discovery requests of small shippers will only be granted upon a substantial showing of need.⁷⁶

The Los Angeles County Transportation Commission (LACTC) initiated a series of adverse abandonment applications for 108 miles of track owned by Southern Pacific Transportation Company. Had the Commission certified that the lines were no longer required for interstate transportation, LACTC would have been able to initiate eminent domain proceedings to obtain the right-of-ways and construct the proposed 150-mile regional mass transit system. However, the parties resolved their dispute by agreeing to joint use of the lines and the proceedings were dismissed.⁷⁷

An adverse abandonment application filed by the owners of property adjacent to Conrail's 30th Street Secondary Track in New York City was

⁶⁹ See, e.g., Docket No. AB-32 (Sub-No. 43), *Boston and Maine Corporation and Springfield Terminal Railway Corporation—Abandonment and Discontinuance of Service in Hartford County, CT* (not printed), served May 3, 1991.

⁷⁰ See, e.g., Docket No. AB-1 (Sub-No. 218), *Chicago and North Western Transportation Company—Abandonment Between Ingallton and Carol Stream, in DuPage County, IL* (not printed), served March 20, 1991.

⁷¹ Docket No. AB-55 (Sub-No. 352), *CSX Transportation, Inc.—Abandonment—In Ben Hill and Irwin Counties, GA* (not printed), corrected decision served February 25, 1991.

⁷² Docket No. AB-1 (Sub-No. 212), *Chicago and North Western Transportation Company—Abandonment—Between Palmer and Laurens in Pocahontas County, IA* (not printed), served August 2, 1991.

⁷³ Docket No. AB-301 (Sub-No. 6), *SouthRail Corporation—Abandonment—Between Whister Station, AL and Waynesboro, MS* (not printed), served July 24, 1991.

⁷⁴ See e.g., Docket No. AB-3 (Sub-No. 94), *Missouri Pacific Railroad Company—Abandonment—In Williamson County, TX (Georgetown Branch)* (not printed), served July 17, 1991.

⁷⁵ See, e.g., Docket No. AB-254 (Sub-No. 5), *Providence and Worcester Railroad—Abandonment—Moshassuck Valley Industrial Track in Providence County, RI* (not printed), served April 4, 1991.

⁷⁶ Docket No. AB-1 (Sub-No. 218), *Chicago and North Western Transportation Company—Abandonment Between Ingallton and Carol Stream, in DuPage County, IL* (not printed), served January 3, 1991.

⁷⁷ Docket No. AB-12 (Sub-No. 129), *Los Angeles County Transportation Commission—Abandonment—Southern Pacific Transportation Company's Burbank Branch—Los Angeles County, CA, et al.*, (not printed), served June 12, 1991.

denied in an initial decision. The Administrative Law Judge found that although the elevated line's condition presented a safety hazard, the potential movements of solid waste over the line justified the line's retention.⁷⁸ The adjacent property owners appealed the decision, and discovery continued at the close of the Fiscal Year.

Notices of exemption. Any carrier seeking abandonment may use these notices if it certifies that no local traffic has moved over the line at issued for two or more years and that any overhead traffic can be rerouted.⁷⁹ The Commission asserted jurisdiction pursuant to the class exemption in one case by rejecting the carrier's argument that because tracks no longer connected the right-of-way to its interstate system, the line became a spur track exempt under 49 U.S.C. 10907(b)(1).⁸⁰ One notice of exemption filed by a subsequent purchaser for a line already approved for abandonment was rejected because it never initiated new operations.⁸¹ Without actual operations over the previously abandoned line, the Commission could not assert jurisdiction over the right-of-way.

Petitions for exemption. Petitions from formal review of abandonment requests are considered individually and are decided under the standards of 49 U.S.C. 10505. Normally the Commission will grant an exemption upon the evidence submitted in a petition and

consider protests on reconsideration. Often, carriers use this exemption procedure for little-used lines.⁸² High rehabilitation expenses have been used to justify these abandonment proposals, but allegations of a carrier deliberately downgrading are subjected to detailed scrutiny before a proposal made on these grounds will be approved.⁸³

Due to a provision in the Commission's 1982 appropriations legislation restricting the Burlington Northern's (BN) abandonments in North Dakota to 350 miles,⁸⁴ the Commission denied BN's petition for exemption to abandon a North Dakota line. The Commission found that it could not exempt BN from this restriction because the Commission's exemption authority is limited to provisions of the Interstate Commerce Act.⁸⁵ Because of the unique nature of the prohibition imposed on BN abandonments, the Commission sought the opinion of the Comptroller General of the United States, charged with rendering decisions concerning interpretations of appropriations legislation, as to whether the prohibition remained effective after 1982. The Comptroller confirmed that it did.⁸⁶ Subsequently, Congress amended the 350-mile limitation on BN abandonments in North Dakota so that it no longer applies to

⁷⁸ Docket No. AB-6 (Sub-No. 334X), *Burlington Northern Railroad Company—Exemption—Abandonment Between Estelline and Plainview, TX* (not printed), served August 9, 1991.

⁷⁹ See e.g., Docket No. AB-286 (Sub-No. 2X), *The New York, Susquehanna and Western Railway Corporation—Abandonment Exemption—Portion of the Edgewater Branch in Bergen County, NJ* (not printed), served June 19, 1991.

⁸⁰ Section 402 of Public Law 97-102 (December 23, 1981).

⁸¹ Docket No. AB-6 (Sub-No. 318X), *Burlington Northern Railroad Company—Abandonment Exemption—In McKenzie County, ND* (not printed), served November 9, 1990.

⁸² *Permanency of Limitation on Interstate Commerce Commission's Approval of Railroad Branchline Abandonments Contained in 1982 Appropriation Act*, No. B-242142 (March 22, 1991).

⁷⁸ Docket No. AB-167 (Sub-No. 1094), *Chelsea Property Owners—Abandonment—Portion of The Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY* (not printed), served January 17, 1991.

⁷⁹ 49 CFR 1152.50.

⁸⁰ Docket No. AB-52 (Sub-No. 71X), *The Atchison, Topeka and Santa Fe Railway Company—Abandonment Exemption—In Lyon County, KS* (not printed), served June 17, 1991.

⁸¹ Docket No. AB-349X, *Northwest Iowa Gathering Lines, Inc.—Abandonment Exemption—Osceola County, IA* (not printed), served May 30, 1991.

exemptions of out of service rail lines.⁸⁷ The D.C. Court of Appeals then remanded the case for reconsideration in light of the amended statute.

Offers of financial assistance. Offers to purchase or subsidize continued operations can be made to prevent any Commission authorized abandonment. An offeror must show that it is financially responsible in its own right and cannot rely on the financial support of third parties before the Commission will consider its offer.⁸⁸ Upon request, the Commission will set the terms of an offer of financial assistance when the parties cannot reach a voluntary agreement. Once the Commission approves the terms of an offer, the carrier must accept the subsidy or sell the line. If the line is sold, the abandonment application is dismissed, and the exemption is revoked.⁸⁹ The Commission used its exemption authority to remove one offer of financial assistance proposal from the time deadline for setting terms and conditions so that the Commission could first consider a discretionary petition to reopen the case to reconsider the authorization.⁹⁰

Upon termination of a subsidy agreement, the carrier may immediately request a Certificate of Abandonment and terminate service on 60-days' notice.⁹¹ Use of statutory exemption pro-

cedures may be used to terminate service upon shorter notice.⁹²

Public use conditions. Under 49 U.S.C. 10906, a carrier may be prevented by the Commission from disposing of rail property for a statutory maximum time period of 180 days unless the property is offered on reasonable terms for sale for public purposes. This permits a public agency to negotiate to acquire the real estate under a line permitted to be abandoned. The condition may be imposed for a variety of public interest projects such as purchases for utility easements⁹³ or preservation of a right-of-way for potential trails.⁹⁴

Interim Trail Use. Notices or Certificates of Interim Trail Use (NITU or CITU) under the National Trails System Act,⁹⁵ are issued to preserve rail rights-of-way for future restoration of rail service and to provide for interim trail use. In issuing them, the Commission is required to ensure compliance by the trail user regarding its assumption of tax and liability responsibility for the trail.⁹⁶ The actual development of the trail, however, is the responsibility of the trail proponent.⁹⁷ Trails Act conditions can only be im-

⁸⁷ Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law No. 102-143, section 343 (October 28, 1991).

⁸⁸ See e.g., Docket No. AB-308 (Sub-No. 1), *Central Michigan Railway Company—Abandonment—East of Ionia to West of Owosso—In Michigan* (not printed), served May 6, 1991.

⁸⁹ Docket No. AB-1 (Sub-No. 234X), *Chicago and North Western Transportation Company—Abandonment Exemption—In Cerro Gordo and Franklin Counties, IA* (not printed), served November 23, 1990.

⁹⁰ Docket No. AB-308 (Sub-No. 1), *Central Michigan Railway Company—Abandonment—East of Ionia to West of Owosso—In Michigan* (not printed), served July 1, 1991.

⁹¹ 49 U.S.C. 10905(f)(5).

⁹² Docket No. AB-1 (Sub-No. 206), *Chicago and North Western Transportation Company—Abandonment and Discontinuance of Trackage Rights—Between Hopkins and Chaska, MN* (not printed), served January 9, 1991.

⁹³ Docket No. AB-55 (Sub-No. 377X), *CSX Transportation, Inc.—Abandonment Exemption—In Thomas County, GA, and Jefferson County, FL* (not printed), served August 9, 1991.

⁹⁴ See, e.g., Docket No. AB-3 (Sub-No. 96X), *Missouri Pacific Railroad Company—Abandonment Exemption—In Phillips, Arkansas, and Desha Counties, AR* (not printed), served June 17, 1991.

⁹⁵ 16 U.S.C. 1247(d).

⁹⁶ Docket No. AB-102 (Sub-No. 13), *Missouri-Kansas-Texas Railroad Company—Abandonment—In St. Charles, Warren, Montgomery, Calaway, Boone, Howard, Cooper and Pettis Counties, MO* (not printed), served February 19, 1991.

⁹⁷ Docket No. AB-3 (Sub-No. 63), *Missouri Pacific Railroad Company—Abandonment in Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, and Bryan Counties, OK* (not printed), served January 4, 1991.

posed on lines that remain subject to the Commission's jurisdiction. Commission jurisdiction remains until the abandonment authority is consummated.⁹⁸

A number of cases have arisen involving whether abandonment authority has been fully consummated, and, therefore, whether Commission jurisdiction continues. The determining factor is usually the carrier's intent to remove a line permanently from its system. In one case, the Commission asserted jurisdiction over a line even though the carrier canceled tariffs and filed a letter of consummation. Jurisdiction was based on that carrier's intent to rail bank the line.⁹⁹ The Commission also asserted its jurisdiction and granted a trails use request where a carrier had ceased all operations and salvaged track because the carrier's willingness to enter into a trail use agreement was found to be inconsistent with the clear intent to consummate the abandonment.¹⁰⁰ This year, for the first time, the Commission revoked a NITU. The affected right-of-way was found to be part of a spur line not subject to the Commission's jurisdiction,¹⁰¹ and accordingly, the Commission found it did not have authority to authorize trail use. However, the Commission noted that the Trails Act applies to "any established railroad rights-of-way" and that the right-of-way for trail use can be pre-

served without Commission authorization because the Act is self-executing.¹⁰²

Abandonment procedure changes.

The Commission modified its abandonment procedures this year by requiring carriers to submit maps identifying lines proposed to be abandoned under the Commission's two-year out-of-service class exemption or through individual petitions for exemption.¹⁰³ Carriers must now provide detailed maps showing the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers. Map submission has always been required for carriers using the Commission's formal abandonment application procedures.

The Commission also considered but decided against requiring carriers to indicate on their system diagram maps lines that they intend to abandon under exemption procedures.¹⁰⁴ Since 1976, carriers have been required by statute¹⁰⁵ to file maps indicating lines subject to potential abandonment. Commission regulations require each carrier to file amendments or statements of no amendments annually.¹⁰⁶ In declining to require these maps for exemptions, the Commission noted that lines abandoned under exemption procedures normally carry little, if any, traffic and *Federal Register* notification is always provided.

Constructions

Applications for new rail construction, a novelty until recent years, con-

⁹⁸ Docket No. AB-7 (Sub-No. 63), *Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, Abandonment Near Tomahawk and Healford Junction in Lincoln County, WI* (not printed), served July 12, 1991. ⁹⁹ Docket No. AB-102 (Sub-No. 16), *Missouri-Kansas-Texas Railroad Company—Abandonment—In Pettis and Henry Counties, Mo.* (not printed), served April 26, 1991.

¹⁰⁰ Docket No. AB-335 (Sub-No. 2X), *KCT Railway Corporation—Abandonment Exemption—In Franklin, Anderson, and Allen Counties, KS* (not printed), served June 12, 1991.

¹⁰¹ Spur, industrial, team, switching, and side tracks, located entirely in one State are exempt under 49 U.S.C. 10907(b).

¹⁰² Docket No. AB-12 (Sub-No. 118X), *Southern Pacific Transportation Company—Exemption—Abandonment of Service in San Mateo County, CA* (not printed), served March 8, 1991.

¹⁰³ *Maps Submitted—Aban. Exempt. Proceedings*, 7 I.C.C.2d 255 (1991).

¹⁰⁴ Ex Parte No. 494, *Rail System Diagram Maps* (not printed), served August 21, 1991.

¹⁰⁵ 49 U.S.C. 10904(e)(2).

¹⁰⁶ 49 CFR 1152.13(c).

tinue to be filed at the Commission, demonstrating that reforms brought about by the Staggers Rail Act of 1980 have continued to attract capital for new investments in the rail industry.

The Commission expedited the environmental review of the Mokena Illinois Railroad Company's (MIRC) proposal to construct and operate a 3,250-foot rail line accessing the Mokena Industrial Park in Will County, IL, to allow MIRC to begin construction before the winter.¹⁰⁷ The agency found that the project did not pose significant environmental risks, and permitted the exemption to become effective.¹⁰⁸

The Commission conditionally approved a proposal by Iowa Power, Inc. (IP), to develop an alternative rail line from Council Bluffs, Iowa, to Iowa Power's Council Bluffs Energy Center (CBEC) to compete with an existing route of Burlington Northern Railroad Company (BN).¹⁰⁹ The construction request is related to a 1989 complaint that IP filed against BN's \$200 per car switching charge for other carriers' unit train movements of coal to IP's Council Bluffs facilities. The Commission has reserved the right to determine whether to consider the complaint as a rate reasonableness issue or as a competitive access complaint and has held the rate complaint in abeyance to give IP the opportunity to obtain alternative service.¹¹⁰

The proposal entailed the acquisition by IP and the operation by CBEC Railway, Inc., of a 3.84-mile Iowa Southern Railroad Company (IS) line; the construction and operation by IP of

new line extending 1.8 miles; that line's crossing of an abandoned BN line; and the reactivation of rail service (by CBEC Railway) of a portion of another IS line previously committed to interim trail use and rail-banking. IP's acquisition and CBEC Railway's operation of IS's 3.84-mile line, was approved under the Commission's class exemption for the acquisition of rail lines by noncarriers. The Commission exempted IP's construction of the 1.8-mile line segment, subject to environmental review but dismissed IP's petition for an order directing BN to allow IP to cross a former BN line because BN's line had been abandoned, removing it from the agency's jurisdiction.

The Commission also modified an existing Notice of Interim Trail Use¹¹¹ to allow the first reconstruction and reactivation of a rail-banked line since the Commission's implementation of the Trails Act. Interim trail use over the line had been instituted by the Iowa Natural Heritage Foundation (INHF), which had purchased the right-of-way from IS. INHF and CBEC jointly requested the reactivation. Because rail banking is voluntary, the Commission found that where, as here, the original owning carrier continues to exist, it must concur in the reactivation. Accordingly, the Commission required IS to file a letter of concurrence. The Commission noted that the request for construction and operation of the line relieved IS of any further common carrier obligation to provide service over the line.

Tongue River Railroad Company (TRR) proposed to construct and operate a 40.3-mile rail line between Ashland and Decker in southeastern Montana. The line would connect with TRR's yet-to-be constructed 89-mile

¹⁰⁷ Finance Docket No. 31680, *Mokena Illinois Railroad Company—Construction Exemption—Will County, IL* (not printed), served October 4, 1990.

¹⁰⁸ *Id.* (in decision not printed), served December 3, 1990.

¹⁰⁹ Finance Docket No. 31717, *Iowa Power, Inc.—Construction Exemption—Council Bluffs, IA, et al.* (not printed), served December 20, 1990.

¹¹⁰ Docket No. 40224, *Iowa Power, Inc. v. Burlington Northern Railroad Company*.

¹¹¹ Docket No. AB-298 (Sub-No. 1X), *Iowa Southern Railroad Company—Exemption—Abandonment in Pottawatomie, Mills, Fremont, and Page Counties, IA* (not printed), served December 12, 1988.

line between Miles City, Montana, and the Ashland terminus.¹¹² At Decker, the line would serve coal mines and would connect with a private rail line owned by Spring Creek Coal Company. TRR would transport low sulfur, sub-bituminous coal, primarily to electric utilities in the Midwest. Environmental and Native American concerns are being addressed through public participation.

Exemption requests for construction were granted for Burlington Northern Railroad Company and CSX Transportation, Inc., to build two connecting links of 1,062 and 1,034 feet at Atmore, Alabama, subject to consultation with the City of Atmore.¹¹³

Rates

Since passage of the Staggers Rail Act of 1980, the average, inflation-adjusted rail rate level has fallen 24.6 percent. From 1988 to 1989, the most recent period for which complete information is available, the overall rail rate fell 2.8 percent.¹¹⁴ During that period, rail transportation rates for farm products increased slightly, but the rates for coal, food and kindred products, lumber and wood, pulp and paper, chemicals, transportation equipment, intermodal, and "all other" commodity groupings declined.

Maximum rate reasonableness. The decline in the overall rate level has been

accompanied by a decline in shipper rate complaints and the Commission's maximum rate reasonableness workload. The parties settled four non-coal rate reasonableness complaints and the Commission then dismissed the complaints. Two related complaints involved sugar,¹¹⁵ another involved carbon black,¹¹⁶ and the fourth involved locomotives.¹¹⁷

In a major rate reasonableness complaint involving grain from Montana to Pacific Northwest ports, the Commission calculated reparations for certain rates previously found to be unreasonably high. The reparations were based on a revenue-to-variable cost standard developed from the average returns paid by shippers of other traffic with similar market characteristics. Reasonable rates for the future were also prescribed.¹¹⁸ However, when the parties attempted to calculate reparations, no reparations were found for the post-1986 period for any class of traffic at issue. Because the rate structure produced revenues below the maximum reasonable level, the Commission found its rate prescription unwarranted and vacated it.¹¹⁹

Recyclables. Rail carrier rates for the transportation of nonferrous recyclable materials are subject to a maximum rate cap¹²⁰ intended to promote use of recyclable materials. The Commission proposed new rules to modify the regulations for computing the statu-

¹¹² The construction of the Miles City—Ashland line was approved in Finance Docket No. 31086, *Tongue River Railroad Company—Rail Construction and Operation* (not printed), served May 9, 1986.

¹¹³ Finance Docket No. 31650 (Sub-No. 1), *Burlington Northern Railroad Company—Construction and Operation Exemption—Connector Track at Atmore, AL* (not printed), embracing Finance Docket No. 31651 (Sub-No. 1), *Burlington Northern Railroad Company—Construction and Operation Exemption—Connector Track at Atmore, AL* (decisions not printed), served May 28, 1991 and June 25, 1991.

¹¹⁴ Interstate Commerce Commission Report, "Rail Rates Continue Multi-Year Decline" (not printed), served May 14, 1991.

¹¹⁵ Nos. 38239S and 38239S (Sub-No. 1), *Amstar Corp. v. The Alabama Great So. R.* (not printed), served October 18, 1990.

¹¹⁶ No. 40464, *Cabot Corp., v. Southern Pac. Transp. Co.* (not printed), served March 28, 1991.

¹¹⁷ No. 40613, *National Railway Equipment Co. v. Daniel R. Murray, Trustee* (not printed), served August 20, 1991.

¹¹⁸ No. 37809, *McCarty Farms v. Burlington Northern, Inc.* (decisions not printed), served March 27, 1991 and June 21, 1991.

¹¹⁹ No. 37809, *McCarty Farms v. Burlington Northern, Inc.* (not printed), served November 21, 1991.

¹²⁰ 49 U.S.C. 10731(e).

tory cap revenue-to-variable cost (R/V/C) ratio for recyclable rail freight rates to minimize the effect of replacing the Rail Form A costing methodology with the new Uniform Railroad Costing System (URCS).¹²¹ Regional and individual carrier cap ratios would be calculated using the new methodology. The national cap ratio would still be used for interregional movements or where the traffic sample is small. The rules would modify the timing and content of annual submissions by eliminating predetermined filing and issuance dates. Following the annual determination of URCS unit costs, a Commission decision would initiate the annual rate cap determinations. The annual proceeding scheduled for 1990 was postponed until 1991, and 1989 and 1990 national average R/V/C ratios of 145.1 and 144.3 percent, respectively, were adopted for nonferrous recyclable commodities.¹²² Regional and individual carrier R/V/C ratios for 1989 and 1990 were also proposed. The Commission resolved the last two nonferrous recyclable commodity complaints this year by affirming an Administrative Law Judge's initial decision awarding reparations.¹²³

Exemptions. The Commission exempted the rail transportation of various lumber, plywood and treated wood products from most of its regulations. The agency will continue to regulate car hire, car service, and joint rates and through routes for boxcar movements involving Class III carriers.¹²⁴ The Com-

mission also exempted carriers from filing quotations for the rail shipment of nonagricultural government traffic moving under 49 U.S.C. 10721.¹²⁵

The Commission considered two challenges to existing class exemptions this year. The agency denied a petition to rescind the "miscellaneous manufactured commodities exemption" as it applied to certain oversize and/or overweight commodities. The Commission rejected arguments that the traffic was rail captive.¹²⁶ An Administrative Law Judge granted a partial revocation of the agricultural commodities and boxcar exemptions by finding that Conrail was market dominant and that a surcharge imposed at Kingsbridge, New York, was unreasonably discriminatory on potato movements from origins west of the Rocky Mountains.¹²⁷ The parties were also requested to provide further evidence concerning damage and demurrage claims. Conrail has asked the full Commission to reconsider the Administrative Law Judge's decision.

Tariff matters. The Commission rejected a connecting carrier's tariff schedules that would have unilaterally nullified proposed restrictions on joint-line distance scale rates.¹²⁸ The agency subsequently dismissed an investigation of those restrictions after the parties negotiated a settlement.¹²⁹ The agency also dismissed a complaint against a unilateral cancellation of nu-

¹²¹ *Railroad Exempt.—Filing Quotations—Section 10721*, 7 I.C.C.2d 325 (1991).

¹²² *Ex Parte No. 346 (Sub-No. 24), Rail Exemption—Misc. Manufactured Commodities* (decisions not printed), served December 5, 1990, and May 16, 1991.

¹²³ *Ex Parte No. 346 (Sub-No. 14A), Rail Exemption—Misc. Agr. Commod.—Pet'n to Revoke* (not printed), served February 13, 1991.

¹²⁴ *Jo. 40483, Nullifying SPT Restrictions on Joint-Line Shipments of Plastic Resin, BN* (not printed), served October 15, 1990.

¹²⁵ *No. 40482, Restrictions on Joint-Line Shipments of Plastic Resin, SPT* (not printed), served July 13, 1991.

¹²¹ *Ex Parte No. 394 (Sub-No. 3), Cost Ratios For Recyclables—Compliance Procedures* (not printed), served January 3, 1991.

¹²² *Ex Parte No. 394 (Sub-No. 6), Cost Ratio For Recyclables—1989 Determination* (not printed), served January 3, 1991; and *Ex Parte No. 394 (Sub-No. 7), Cost Ratio For Recyclables—1990 Determination* (not printed), served January 3, 1991.

¹²³ *Nos. 39639 and 39612, Vulcan Materials Co. v. Alton & Southern Ry. Co.* (not printed), served December 26, 1990.

¹²⁴ *Rail Exemption—Lumber or Wood Products*, 7 I.C.C.2d 673 (1991).

merous joint rates and through routes after the routings were republished.¹³⁰ The Commission affirmed a prior finding that tariffs setting charges for the movement of empty private tank cars to repair sites for ordinary repair or maintenance were non "departure" tariffs under the National Tank Car Allowance Agreement¹³¹ and subsequently discontinued a related investigation.¹³²

Joint rates. The Commission denied a complaint challenging the use of "multiple independent factor through rates" (MIFTRs).¹³³ A MIFTR is a unitary through rate made by agreement among the participating carriers. Unlike a traditional joint rate, a MIFTR enables a carrier to raise or lower its proportional charge without obtaining the specific concurrence of the others. The Commission accepted MIFTRs as joint rates, finding that the participating carriers' general agreement to accept any participant's change replaces the traditional specific concurrence. Having found MIFTRs to be joint rates, the Commission concluded that their independent factors need not be published; that they do not, on their face, violate the antitrust laws; and, that they are neither anticompetitive nor an unreasonable practice.

Car service. The Commission proposed new rules to deprescribe intercarrier car-hire rates over a 10-year period¹³⁴ and to exempt mandatory arbitration of car-hire rate disputes from

statutory restrictions on collective ratemaking.¹³⁵ The 4-year expiration of the exclusion and rate freeze for Class II railroads was extended from October 15 to October 31, 1990,¹³⁶ but the Commission denied the Bangor and Aroostook Railroad Company an exemption from the expiration of the 4-year time limit on the car interchange protections.¹³⁷

The Commission approved a final valuation methodology settlement for determining the mileage allowance payments due the owners of certain privately owned tank cars.¹³⁸ The agency subsequently prescribed a new methodology for valuing tank cars where there is no manufacturer's invoice (the manufacturer is the lessor) or the invoice does not reflect the true value of the car because of purchaser contributions.¹³⁹

The Commission issued a report on its September 18, 1990, conference in which it moderated discussions between grain shippers and rail carriers on private sector solutions to grain car supply and allocation problems.¹⁴⁰

The report identifies six causes for car shortages: (1) a volatile market for grain and unpredictable surges in demand; (2) weather conditions; (3) the aging and shrinking numbers of the current grain car fleet; (4) the lack of incentive for investment in grain cars; (5) railroad/shipper practices, including inefficient locomotive and crew use by railroads, slow grain car turnaround

¹³⁰ No. 40440, *Union Pacific R. Co. v Southern Pacific Transp. Co.* (not printed), served November 2, 1990.

¹³¹ *Charges for Movement of Empty Cars*, B&P RR, Inc., 7 I.C.C.2d 239 (1991).

¹³² No. 40433, *Switching Charges for Privately Owned Cars Moving to and from Repair Facilities*, NW and SOU, April 20, 1990 (not printed), served March 18, 1991.

¹³³ No. 40298, *The Society of the Plastics Industry, Inc. v. Consolidated R. Corp.* (not printed), served October 22, 1990.

¹³⁴ Ex Parte No. 334 (Sub-No. 8), *Joint Pet'n for Rulemaking on Railroad Car Hire Compensation* (decisions not printed), served January 16 and 31, 1991.

¹³⁵ Ex Parte No. 334 (Sub-No. 8A), *Joint Pet'n for Exempt. of Arbitration Rule* (decisions not printed), served January 16 and 31, 1991.

¹³⁶ *Boxcar Car Hire and Car Service*, 7 I.C.C.2d 48 (1990).

¹³⁷ *Boxcar Car Hire and Car Service—Exempt.—B&A RR. Co.*, 7 I.C.C.2d 129 (1990).

¹³⁸ Ex Parte No. 328 (Sub-No. 1), *Association of American Railroads—Petition for Clarification* (not printed), served January 16, 1991.

¹³⁹ *Investigation of Tank Car System*, 7 I.C.C.2d 645 (1991).

¹⁴⁰ *Grain Car Supply—Conference of Interested Parties*, 7 I.C.C.2d 694 (1991).

time, and shipper over ordering of cars from railroads; and, (6) federal restrictions on the use of Canadian cars to ease shortages.

The report concluded that the issue of grain car supply and allocation can best be settled through private-sector negotiation, where cooperation and communication between carriers and shippers is more efficient and less costly than litigation. The Commission's report added, however, that the Commission is always committed to attempting to assist parties in resolving transportation problems when assistance is requested.

Revenue adequacy. The Commission issued two annual revenue adequacy findings. Two Class I railroads, the Burlington Northern Railroad Co. and Norfolk Southern Corporation, were found revenue adequate for 1989 with earnings exceeding 11.5-percent, the target cost of capital.¹⁴¹ After determining that 11.8 percent represented the railroad industry's composite cost of capital for 1990,¹⁴² the Commission found that one Class I railroad, the Illinois Central Railroad Co., was found revenue adequate for that year.¹⁴³

Rail Cost Adjustment Factor (RCAF). The RCAF reflects current rail transportation costs and is used to adjust rates to reflect cost changes both in published rates and voluntarily in contract rates. It is based on the quarterly all-inclusive index of costs prepared by the Association of American Railroads (AAR). The Commission found that the respective quarterly

RCAs (adjusted) for this fiscal year were 1.065, 1.051, 1.045 and 1.057.¹⁴⁴

The Commission also readdressed its RCAF regulations. The agency modified the methodology used to calculate the labor component of the all-inclusive index.¹⁴⁵ Because the RCAF must be adjusted for long-run changes in railroad productivity, the Commission continued to develop productivity adjustment standards and invited comments on: (1) establishing an appropriate time span for productivity measurements; (2) excluding special charges from input expenses; and (3) computing the multi-year productivity trend.¹⁴⁶

State certification and intrastate regulation.¹⁴⁷ The Staggers Act requires Commission recertification of state agencies as their initial 5-year certifications to regulate intrastate rates expire. Following simplified recertification procedures,¹⁴⁸ Colorado, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, New York, North Dakota, and West Virginia were recertified for additional five-year periods.¹⁴⁹ The Commission

¹⁴⁴ Ex Parte No. 290 (Sub-No. 5), *Quarterly Rail Cost Adjustment Factor* (decisions not printed), served December 21, 1990; March 20, 1991; June 19, 1991; and September 20, 1991.

¹⁴⁵ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served November 27, 1990.

¹⁴⁶ Ex Parte No. 290 (Sub-No. 7), *Productivity Adjustment—Implementation* (not printed), served February 15, 1991.

¹⁴⁷ See Appendix B for the current status of all States.

¹⁴⁸ See *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680 (1989).

¹⁴⁹ Ex Parte No. 388 (Sub-No. 3), *Intrastate Rail Rate Authority—Colorado* (not printed), served June 24, 1991; Ex Parte No. 388 (Sub-No. 9), *Intrastate Rail Rate Authority—Iowa* (not printed), served December 13, 1990; Ex Parte No. 388 (Sub-No. 11), *Intrastate Rail Rate Authority—Kentucky* (not printed), served March 6, 1991; Ex Parte No. 388 (Sub-No. 13), *Intrastate Rail Rate Authority—Maryland* (not printed), served December 7, 1990; Ex Parte No. 388 (Sub-No. 14), *Intrastate Rail Rate Authority—Michigan* (not printed), served December 12, 1990; Ex Parte No. 388 (Sub-No. 15), *Intrastate*

¹⁴¹ *Railroad Revenue Adequacy—1989 Determination*, 7 I.C.C.2d 158 (1990) and 7 I.C.C.2d 580 (1991).

¹⁴² *Railroad Cost of Capital—1990*, 7 I.C.C.2d 620 (1991).

¹⁴³ *Railroad Revenue Adequacy—1990 Determination*, 8 I.C.C.2d 1 (1991).

provisionally recertified Oregon and New Mexico.¹⁵⁰ The Commission assumed jurisdiction over Washington intrastate rates at the request of the State after its initial 5-year certification expired.¹⁵¹

Joint Rate Surcharges, Cancellations, and Competitive Access

Carriers may unilaterally impose surcharges on traffic originating or terminating on light-density lines,¹⁵² defined as those carrying less than 3,000,000 ton-miles of freight per mile for a revenue-inadequate carrier, or 1,000,000 ton-miles for a revenue-adequate carrier. Surcharges may be applied when existing rates do not provide revenues adequate to cover 110 percent of carrier variable costs or 100 percent of the reasonably expected costs of continuing to operate a line. While railroad carrier authority to impose commodity surcharges (i.e., not necessarily on light density line traffic) expired on September 30, 1984, negative surcharges (i.e., allowances) may, under a Commission exemption, still be applied.

This year, both joint rate surcharges and cancellations dropped considerably from levels reached in

fiscal year 1990.¹⁵³ Joint rate cancellations continued a steep decline reaching 36 in fiscal year 1991 as compared to 75 in the previous fiscal year.¹⁵⁴ Conrail, which dominated the surcharge and cancellation activity when authority was first granted, accounted for only one item, a cancellation of a previous surcharge. Only short line and regional railroads filed light density line surcharges.

The railroads filed 14 light density line surcharges, nearly half as many as the previous year. Class I carriers accounted for only one, filed by CSX Corp. for \$200 applying to one point in Georgia. Twelve Class III railroads filed 13 light density line surcharges. Some newly formed short lines participated (such as the Atlantic and Gulf Railroad and the Eastern Alabama Railway).

The formulation of some of the surcharges appears more complex than in previous years—with some filings (in particular, those by Eastern Alabama Railway and Georgia Central Railway) showing a very wide range of surcharge amounts depending on specific Standard Transportation Commodity Code (STCC) groups. The Georgia Central Railway filing sets specific carloading levels beyond which traffic becomes subject to applicable surcharges. Overall, surcharge amounts range from \$10 to \$2,450 per car. The revenue impact of the surcharges is expected—as it has been for several years—to be minor; often the result of imposing high surcharge amounts is simply to discourage traffic that may be uneconomic.

Rail Rate Authority—Minnesota (not printed), served March 7, 1991; *Ex Parte No. 388 (Sub-No. 17), Intrastate Rail Rate Authority—Missouri* (not printed), served December 7, 1990; *Ex Parte No. 388 (Sub-No. 23), Intrastate Rail Rate Authority—New York* (not printed), served November 21, 1990; *Ex Parte No. 388 (Sub-No. 24), Intrastate Rail Rate Authority—North Dakota* (not printed), served January 3, 1991; and *Ex Parte No. 388 (Sub-No. 35), Intrastate Rail Rate Authority—West Virginia* (not printed), served November 13, 1990.

¹⁵⁰ *Ex Parte No. 388 (Sub-No. 22), Intrastate Rail Rate Authority—New Mexico* (not printed), served March 18 and September 17, 1991; and *Ex Parte No. 388 (Sub-No. 27), Intrastate Rail Rate Authority—Oregon* (not printed), served October 30, 1990, and April 26, 1991.

¹⁵¹ *Ex Parte No. 388 (Sub-No. 34), Intrastate Rail Rate Authority—Washington* (not printed), served June 13, 1991.

¹⁵² 49 U.S.C. 10705a(b)(1).

¹⁵³ Under Section 217(c)(1) of the Staggers Act, the Commission is to include in each of its annual reports an analysis of the preceding year's surcharge and joint-rate cancellation activity.

¹⁵⁴ All counts of surcharges and cancellations cover those items becoming effective during fiscal year 1991, including those actually filed prior to the beginning of the fiscal year.

Only two negative surcharges were filed. One, for \$400, extended to 1991 a surcharge by the SOO Line in effect in 1990 on chemical and allied products routed via SOO from Kansas City to Chicago. The other, for \$125, was filed by the Eureka Southern Railroad to apply on loadings at a specific point.

Six surcharges were canceled or revised, compared with nine the previous year. Conrail canceled one light density line surcharge. Burlington Northern increased a light density line surcharge by \$2 per car. Class III carriers accounted for the remaining four revisions. These include a surcharge cancellation, two reductions (one by introducing a lower surcharge for multiple car movements), and one reduction in the number of carloads to which a surcharge applies.

Four Class I railroads filed joint rate cancellations. They filed a total of 28, 15 of which were filed by Illinois Central on limestone slurry, kaolin, clay, alumina and corn oil movements. Commodities affected by the other Class I railroad cancellations were wheat middlings (Norfolk Southern and Missouri Pacific) and chemicals, residual fuel oil, matches, and sugar (SOO Line). Three Class III railroads engaged in joint rate cancellations—Chicago & Central Pacific (one cancellation in connection with directed service over the Cedar Valley Railroad), MidSouth (5 cancellations on cement traffic), and Southrail (2 cancellations on carbon black to the South).

In summary, the joint rate surcharge and cancellation provisions of the Staggers Rail Act continue to be used, affording flexibility where carriers need it to maintain financial viability and with no evidence of competitive harm to shippers or to the short line railroads.

The last two petitions seeking rate prescriptions because of Conrail's cancel-

lation of rates via eastern and mid-western gateways in 1981 were dismissed after the parties negotiated settlements.¹⁵⁵

The Commission continued to refine its *SSW Compensation* methodology¹⁵⁶ for determining the net income and interest rental elements of compensation to be paid by the Southern Pacific Railroad to the Union Pacific Railroad for Commission-imposed trackage rights between Kansas City and St. Louis, Missouri. It modified the principal case by clarifying four technical issues not specifically considered before.¹⁵⁷ The *SSW Compensation* methodology may be used when the competitive access standards¹⁵⁸ are not applicable. One such case was reopened to resolve valuation issues related to compensation for the renewed exercise of an expired trackage rights agreement.¹⁵⁹

Freight Car Service

As reported by the Association of American Railroads (AAR), surpluses of railroad-controlled freight cars decreased in fiscal year 1991. The daily average surplus at the end of September 1990 was 48,772 cars, compared to an average of 44,388 cars at the end of September 1991. The daily average surplus during the entire fiscal year 1991 was 48,377 cars. As of October 1, 1990, Class I railroads reported a combined fleet ownership of 663,598 cars, but by October 1, 1991, that ownership level had dropped to 638,889 cars. This was a net reduction in the combined Class I fleet of 24,709

¹⁵⁵ No. 38676 (Sub-No. 1), *Changes in Routing Provisions—Himont U.S.A., Inc.* (not printed), served June 12, 1991; and No. 38676 (Sub-No. 4), *Changes in Routing Provisions—International Paper Co.* (not printed), served August 7, 1991.

¹⁵⁶ See *St. Louis Southwestern Ry. Co. Compensation—Trackage Rights*, 4 I.C.C.2d 668 (1987).

¹⁵⁷ *Id.*, 8 I.C.C.2d 80 (1991).

¹⁵⁸ See *Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985).

¹⁵⁹ *Arkansas & Missouri R. Co. v. Missouri Pacific R. Co.*, 7 I.C.C.2d 164 (1990).

cars, which is the difference between the number of cars installed (2,413) and the number of cars retired or otherwise transferred from the control of the Class I carriers (27,122). On September 30, 1991, the entire rail car fleet of Class I, II, and III railroads, private car companies, and shippers consisted of 1,195,001 cars, an overall reduction of 16,830 cars from the prior fiscal year.

The aggregate capacity of railroad and private freight cars in service at the end of calendar year 1990 was 108.1 million tons, a decrease of 16.8 million tons (13.4 percent) from the aggregate capacity of 124.9 million tons at the end of 1984. During the same period, however, Class I railroads handled a 12.2 percent increase in revenue ton miles. The railroads attribute this increase to improved equipment utilization as indicated by the following table noting significantly improved equipment turnaround times for calendar year 1990.

	Calendar Year			
	1975	1980	1985	1990
Turnaround Time—Days:				
Box.....	30.0	34.2	38.8	35.2
Refrigerators.....	25.4	36.4	51.8	37.0
Gondolas.....	22.1	20.5	19.1	13.1
Hoppers.....	13.8	14.7	14.7	10.8
Covered Hoppers..	24.0	26.6	33.0	27.0
Flat.....	16.6	17.6	11.8	9.8
Average All Cars..	22.0	23.2	22.6	17.8

Source: Association of American Railroads

The AAR also reported that fiscal year 1991 freight car loadings by Class I railroads totaled 15,528,156, a decrease of 685,506 cars from the fiscal year 1990 car loading total of 16,213,662. Relative to individual commodity loadings, coal ranked first with 6,154,371 coal-loaded cars, a decrease of 94,050 cars from the 6,248,421 cars loaded with coal in fiscal year 1990. Cars carrying chemicals ranked second in total loadings with 1,404,434 cars, up slightly from the 1990 loading figure of 1,400,785 cars. The

third most frequently loaded commodity was grain and grain products, with 1,343,222 cars during the reporting period, or 134,530 carloads fewer than the 1,477,752 cars loaded in fiscal year 1990. Car loadings of motor vehicles and equipment decreased by 114,195, from 900,914 cars in fiscal year 1990 to 786,719 cars in fiscal year 1991.¹⁶⁰ Overall, traffic loadings in 15 of 19 commodity groups declined in fiscal year 1991.

In fiscal year 1991, Class I railroad loadings of trailers and containers increased 8,081 units, from a combined total of 6,138,455 in fiscal year 1990 to 6,146,536 in fiscal year 1991.¹⁶¹ Container loadings increased by 8.6 percent, while trailer loadings decreased by 6.4 percent.

The locomotive ownership of Class I railroads consisted of a total of 19,553 units on October 1, 1991, compared to 19,865 units on October 1, 1990, a 312 unit decrease. At the end of fiscal year 1991, Class I railroads had 88 multipurpose locomotives on order.

Directed Service

The Interstate Commerce Act authorizes the Commission to direct railroads to provide service over another carrier's lines in emergency situations when a failure to provide rail service creates an emergency. Under this authority, the agency authorized the Chicago Central & Pacific Railroad Company (CCP) to operate as a directed railroad company, uncompensated and without Federal subsidy over the lines of the Cedar Valley Railroad Company (CVR) between Albert Lea, Minnesota,

¹⁶⁰ The 1990 loading figures have been revised during the course of this reporting year and thus differ from the data reported in the Commission's previous annual report.

¹⁶¹ Effective January 1, 1989, statistical accounting for the number of Trailer-on-Flatcar/Container-on-Flatcar flatcars loaded was eliminated by the AAR in favor of accounting for the number of trailer/container units loaded.

and a connection with the CCP at Waterloo, Iowa, for a period of 60 days ending August 3, 1991.¹⁶² CVR shut down May 22, 1991, for lack of operating funds. The Commission then opened the proceeding to receive comments about whether to permit CCP to cancel joint line rates with SOO Line Railroad Company and whether to extend directed service.¹⁶³ Subsequently, the Commission allowed CVR to cancel the joint rate and extended directed service until January 30, 1992.

Directed service was first ordered in 1989 over the lines of the bankrupt Delaware and Hudson Railway Company (D&H). That order ceased in 1990 when the D&H Trustee resumed full operations. After the Bankruptcy Court approved the sale of D&H to D&H Corporation, a subsidiary of Canadian Pacific Limited, in June 1990, the court ordered D&H to cease operations by July 31, 1991. In order to prevent a disruption in service, the Commission authorized D&H Corporation and Canadian Pacific Ltd. to operate over D&H's lines.¹⁶⁴ The Commission twice extended the duration of the directed service until the sale could be consummated, after which the order was vacated.¹⁶⁵

¹⁶² Directed Service Order No. 1511, *Chicago Central & Pacific Railroad Company—Directed Service—Cedar Valley Railroad Company* (not printed), served June 5, 1991.

¹⁶³ Directed Service Order No. 1511, *Chicago Central & Pacific Railroad Company—Directed Service—Cedar Valley Railroad Company* (not printed), served July 11, 1991.

¹⁶⁴ Directed Service Order No. 1510, *D&H Corporation/Canadian Pacific Limited Authorized to Operate Tracks of Delaware and Hudson Railway Co., Debtor (Francis P. DiCello, Trustee)* (not printed), served August 1, 1990.

¹⁶⁵ Directed Service Order No. 1510-A, *D&H Corporation/Canadian Pacific Limited Authorized to Operate Tracks of Delaware and Hudson Railway Co., Debtor (Francis P. DiCello, Trustee)* (not printed), served February 1, 1991.

Passenger Service

The Commission is currently reviewing its jurisdiction over rail passenger transportation. The agency has jurisdiction over most interstate rail passenger service.¹⁶⁶ Exempt from Commission jurisdiction are regional or local mass rail transportation, and street, suburban or interurban electric railways;¹⁶⁷ and intrastate operations.¹⁶⁸ The Commission's role in Amtrak service is limited to facilitating and coordinating Amtrak's operations with regulated carriers.

The Commission reversed its declaratory rulings regarding the Napa Valley Wine Train, Inc., finding that it did not have jurisdiction over the operations.¹⁶⁹ In its decision, the Commission discussed the kind of activity that makes an otherwise intrastate operation subject to Commission jurisdiction. The agency stated that it would have jurisdiction over a railroad lying wholly within one state if it participated in the movement of passengers from one state to another under a common arrangement with connecting carriers, such as by means of through ticketing or the movement of interstate freight. The Wine Train's operations were found not to provide a sufficient nexus to interstate commerce to permit Federal regulation of its intrastate passenger operations. Its interstate freight service is minimal and its passenger operations are purely local.

The Commission issued two notices of exemption for new Class III rail passenger service. American European Express, Inc. (AEE), obtained authority to operate over 1,020 miles between Chicago, Illinois, and New York, New York, via Indianapolis, Indiana, White Sulphur Springs,

¹⁶⁶ 49 U.S.C. 10101 et seq.

¹⁶⁷ 49 U.S.C. 10504 and 10907(b)(2), respectively.

¹⁶⁸ However, some intrastate aspects are still under Commission jurisdiction. For example, some discontinuances under 49 U.S.C. 10909.

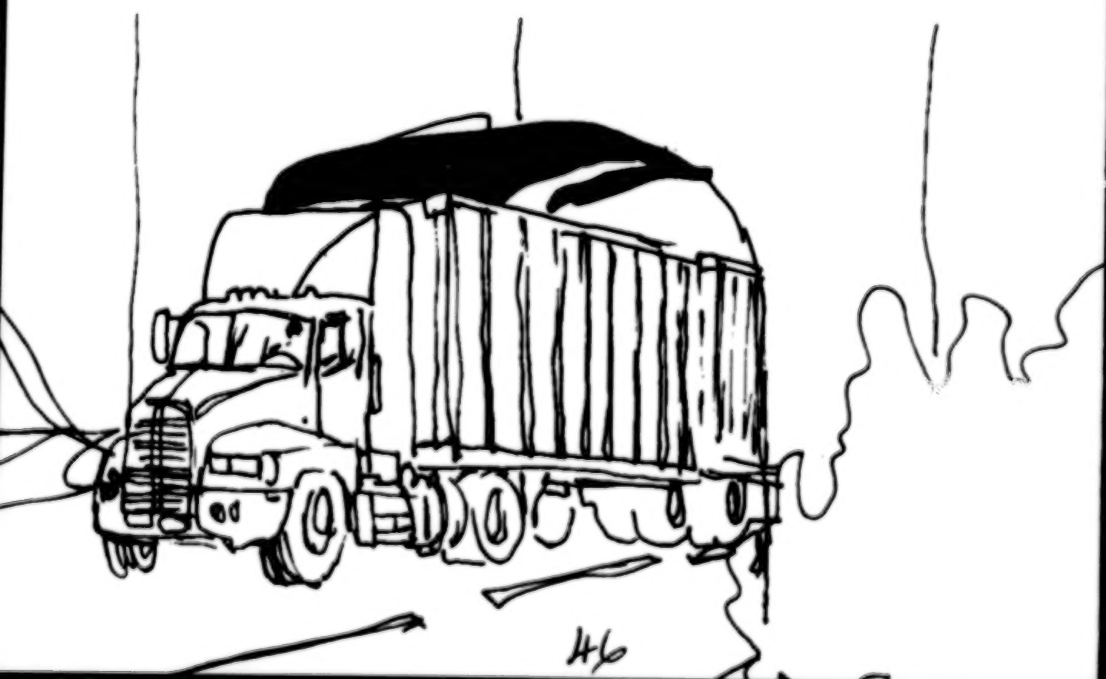
¹⁶⁹ *Napa Valley Wine Train, Inc.—Pet. for Declaratory Order*, 7 I.C.C.2d 954 (1991).

West Virginia, Washington, D.C., Baltimore, Maryland, Wilmington, Delaware, and Philadelphia, Pennsylvania. AEE had previously operated as an adjunct of Amtrak but now operates its own trains as a separate entity.¹⁷⁰ The second notice authorized the Minnesota Zephyr Limited to operate special interstate passenger service over two routes totalling about 51 miles between Minneapolis, Minnesota, and a point east of Hudson, Wisconsin, and between Hudson point and Duluth Junction, Minnesota.¹⁷¹

Designated agents of the Commission's Office of Compliance and Consumer Assistance issued four emergency orders under 45 U.S.C. 562(c) to prevent rail passenger service interruptions and granted permission to Amtrak passenger trains to use alternative routes to reach their destinations. Such orders are issued whenever a railroad company operating an Amtrak train cannot move the train over its normal route and an alternative route exists over the lines of another carrier.

¹⁷⁰ Finance Docket No. 31892, *American European Express, Inc.—Operation Exemption—Between Chicago, IL, and New York, NY* (not printed), served June 14, 1991.

¹⁷¹ Finance Docket No. 31924, *Minnesota Zephyr Limited—Operation Exemption—Between East of Hudson, WI, and Minneapolis and Duluth Junction, MN* (not printed), served September 16, 1991.



TRUCKING COMPANIES

Financial Condition

The earnings of 100 of the Nation's largest trucking companies (excluding United Parcel Service)¹ rose substantially during the first three months (October 1, 1990 to December 31, 1990) of fiscal year 1991, compared to the same period of fiscal year 1990. Net carrier operating income increased 136 percent to \$208.3 million, and net income improved 290 percent to \$86.1 million from the relatively low amounts reported for the three months ending December 31, 1989. Operating revenues rose more than nine percent during this period due, in part, to fuel surcharges allowed during the Persian Gulf crisis.

However, as a result of the Nation's poor economy overall, the earnings for this same group of carriers for the remaining nine months (January 1, 1991 to September 30, 1991) of fiscal year 1991 declined significantly as compared to the same period of fiscal year 1990, as net carrier operating income decreased almost 20 percent to \$565.7 million and net income fell almost 26 percent to \$273.2 million. Operating revenues and revenue tons hauled both increased by about three percent. The decline in earnings may be attributed to operating expenses increasing more than operating revenues and to substantial decreases in earnings reported by several large carriers.

As fiscal year 1991 came to a close, there was evidence of a recovery in the Nation's economy. Given the trucking industry's historical link to broader economic activity, improved motor carrier performance during fiscal year 1992 appears likely.

Motor carriers face intense competition, among themselves as well as

from other modes. Moreover, much of this competition stems from the reforms provided in the Motor Carrier Act of 1980. Within the ICC authorized subsector alone, for example, the number of motor carriers has grown from 18,045 in 1980 to 46,389 in 1991.

Figures that show entry by new motor carriers, however, understate the industry's competitive intensity. The extent of contract, 48-state, and brokerage authority tell a more complete story. Contract authority allows carriers to tailor specific service features to individual customers, and the fact that contract rates need not be filed at the Commission facilitates greater price competition among carriers bidding to secure shippers' business. In 1980, only about a third of all ICC carriers held contract authority, and each carrier could provide contract service to only eight shippers. In 1991, nearly 75 percent of all carriers held contract authority, and there was no limit to the number of shippers the carrier could serve.

Similarly, whereas 48-state operating authority was held by very few carriers in 1980, more than 14,000 held it in 1991. Since 1980, a majority of Commission-regulated less-than-truckload (LTL) carriers have obtained 48-state general commodity authority, permitting them to aggressively expand into each other's markets.

Finally, the number and importance of ICC licensed brokers continues to grow, with fewer than 100 in 1980 to more than 7,000 in 1991. Brokers perform an important service by matching shippers with carriers, continually booking freight reservations, and generating powerful and beneficial competitive pressures throughout the industry.

Intercity LTL traffic is dominated by larger ICC authorized carriers. While the successful larger carriers increased their share of national LTL revenues over the past decade, these gains were generally achieved by expansion into

¹ The UPS carriers are not included in this data because their operations (shipments of relatively small packages) are generally dissimilar from other carriers in the motor carrier industry.

new territories rather than by expansion and increased concentration within carriers' previous markets. Growth in this fashion has intensified competition and benefitted the public by increasing the number of efficient carriers available to shippers in many markets.

Mergers And Unifications

The Nation's motor carriers continued to use the Commission's expedited exemption and small carrier transfer procedures² to effect changes in their financial structures and to transfer operating authorities.³ Appendix B depicts the activity in this area during the 1991 fiscal year.

The Commission continued to consider safety fitness a substantive issue in deciding whether to approve a transfer under 49 U.S.C. 10926 or to grant an exemption under 49 U.S.C. 11343(e). During the fiscal year, the Commission adopted a revised policy for considering the U.S. Department of Transportation's (DOT) safety fitness ratings of carriers involved in finance transactions. The Commission's action in this area was a part of its comprehensive revision of its safety fitness policy in both the licensing and finance dockets.⁴ See the "Safety" section for a discussion of the Commission's policy in the licensing area.

Under the revised policy, the Commission will focus on the DOT safety fitness ratings held by acquiring or surviving carriers and, generally, will reject a finance transaction if approval would result in the acquisition or control of operating authority by a carrier holding an "Unsatisfactory" safety fitness rating from DOT.

The Commission has determined that, pursuant to 49 U.S.C. 11341(a), its exclusive jurisdiction over motor property finance transactions extends to the transfer of intrastate operating authorities as part of a broader transaction involving a carrier's interstate rights.⁵ During the year, the Commission issued a series of decisions reaffirming and applying its statutory authority to effect the transfer of State operating authorities under its exemption procedures.⁶ In exempting the transfer of the Nebraska, Alabama, Minnesota, and Oregon State certificates, the Commission rejected contentions that the purchase of a franchise or certificate of authority to operate is not a purchase of property within the purview of 49 U.S.C. 11343(a)(2). The Commission dismissed contentions that, in asserting its preemption authority, it is violating the National Transportation Policy requiring cooperation with the States on transportation matters.⁷ Finally, the Commission emphasized that dormancy of operating authority and its effect on the transferability of operating rights is no longer an issue in transfer proceedings.

In a proceeding involving a transfer of operating authority under the Commission's small carrier transfer regulations, the Commission agreed with the position of a protesting carrier that the similarity between the transferee's name

² No. MC-C-30123, *Thurston Motor Lines, et al.—Petition for A Declaratory Order—Transfer of Intrastate Rights Under 49 U.S.C. 11343 (a) and (e)* (not printed), served January 13, 1989; *aff'd* sub nom. *Tennessee Public Service Commission v. ICC*, 891 F.2d 292 (6th Cir. 1989) (per curiam).

³ No. MC-F-19766, *Retzlaff Bros., Inc.—Purchase Exemption—Best Refrigerated Express, Inc., and Betts Trucking, Inc.* (not printed), served September 10, 1991; *Averitt Express, Inc.—Pur. Exempt.—Deaton, Inc.*, 7 I.C.C.2d 634 (1991); *Herman Bros., Inc.—Pur. Exempt.—Thompson Truck Line*, 7 I.C.C.2d 382 (1991); and *Washington Trucking, Inc.—Pur. Exempt.—Maddox Transfer*, 7 I.C.C.2d 372 (1991).

⁷ 49 U.S.C. 10101(a)(1)(E).

² 49 U.S.C. 11343 and 10926, respectively.

³ 49 CFR Parts 1186 and 1181, respectively.

⁴ *Safety Fitness Policy*, 8 I.C.C.2d 123 (1991), embracing Ex Parte No. MC-111 (Sub-No. 1), *Transfer Rules*, and Ex Parte No. MC-179, *Pur. Merger, & Cont.—Motor Passenger & Water Carriers* (previously embraced in *Transfer Rules*, 7 I.C.C.2d 147 (1990)).

and that of protestant was likely to confuse consumers and potentially harm protestant contrary to the National Transportation Policy.⁸ In order to protect consumers and the protesting carrier, the Commission approved the transfer subject to the condition that the transferee change its name so that it would be readily distinguishable from protestant's.

In a proceeding involving a corporate reorganization by a major motor carrier system, the Commission denied a request by labor interests that it revoke the exemption it had approved.⁹ The Commission rejected arguments that the size of the involved carriers took the restructuring outside the scope of the exemption regulations. It also found that the complainants had not proven that the transaction would adversely affect employees.

Rates And Rate Bureaus

During the 1990 fiscal year, the U.S. Supreme Court issued a significant decision rejecting the Commission's negotiated rates policy (*Maislin*).¹⁰ Under that policy, the Commission had declared it an unreasonable practice in violation of 49 U.S.C. 10701(a) for a carrier to collect undercharges based on a filed tariff rate in lieu of rates that had been negotiated, billed and paid, but not filed with the Commission. The Court held that, while the Commission has jurisdiction to find a rate unreasonable, it cannot

find it an unreasonable practice for a carrier to do what the statute requires—charge the rate specified in the applicable tariff on file with the Commission (i.e., the filed rate doctrine).

Although it discontinued the application of its negotiated rates policy, the Commission continued to process cases involving carrier claims for undercharges during the 1991 fiscal year. The Commission continued processing cases involving carrier claims for undercharges. The Commission issued a number of decisions based on tariff interpretation and application. In several cases, the Commission considered whether shippers were entitled to discounts they had received.¹¹ In another case, the Commission based its decision on the classification of the commodity that had been transported.¹² In a case involving a freight forwarder's claim for undercharges, the Commission found that the tariff upon which the forwarder relied was void for the reason that the forwarder was not a participating carrier in a governing tariff to which the forwarder's tariffs referred.¹³

The Commission solicited public comment in a case involving undercharge claims by motor carrier Over-

¹¹ See, e.g.

¹² No. 40361, *Transportation Financial Services, Inc.—Petition for Declaratory Order* (not printed), served May 17, 1991.

¹³ No. 40387, *Wondroast, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Transportation Systems International, Inc.* (not printed), served June 5, 1991, applying the Commission's rule at 49 CFR 1312.4(d); *Sun Electric Corp. v. Advance United Expressways, Inc.*, 7 I.C.C.2d 971 (1991), petition to reopen denied in decision served September, 19, 1991; No. 40417, *D.W. Davies & Co., Inc. v. Express Freight Lines, Inc.* (not printed), served May 17, 1991; No. 40451, *Vent-A-Hood of California, Inc. v. Consolidated Freightways Corporation of Delaware* (not printed), served March 13, 1991; and No. 40378, *Tennant Company—Petition for Declaratory Order—Certain Rates and Practices of Murphy Motor Freight Lines, Inc.* (not printed), served December 17, 1990.

⁸ No. MC-FC-85257, *Con-Way Corporation, D/B/A W.S. Stewart Corporation, Transferee, and W.S. Stewart Corporation, Transferor* (not printed), served July 16, 1991.

⁹ No. MC-F-19862, *Ryder System, Inc., Ryder Automotive Carrier Group, Inc., and Ryder Automotive Operations, Inc.—Continuance in Control Exemption—Numerous Carriers After Corporate Restructuring* (not printed), served September 24, 1991.

¹⁰ *Maislin Industries, U.S. v. Primary Steel, Inc.*, 110 S.Ct. 2759 (1990), invalidating the Commission's policy set forth in *NITL—Pet. to Inst. Rule on Negotiated Motor Car. Rates*, 31 C.C.2d 99 (1986), clarified at 51 C.C.2d 623 (1989).

land Express, Inc.¹⁴ The case involves the issue of whether Overland was a participating carrier in the Household Goods Carriers' Bureau Mileage Guide 100 and, if not, whether the carrier's mileage rates are void. The Commission held numerous related proceedings in abeyance pending final action in this case which was pending as the fiscal year closed.

Also as the year closed, Congress was exploring the possibility of enacting legislation that would have limited or modified application of the filed rate doctrine in negotiated rates cases. (See Legislative chapter.) During fiscal year 1991, the Commission affirmed the availability of a rate reasonableness challenge as a direct defense to an undercharge action based on a filed rate.¹⁵ In its decision, the Commission emphasized its exclusive jurisdiction to determine rate reasonableness, and it offered examples of criteria or factors parties might apply in bringing rate reasonableness cases before the Commission. The Commission noted that it might consider relevant rate comparisons, a carrier's proffer of a particular rate, and whether the tariff rate would have moved the traffic had it been assessed at the time the shipment took place.

Following issuance of *Rate Reasonableness*, the Commission began processing undercharge proceedings that had been held in abeyance in light of *Maislin*. The Commission determined that the Supreme Court's action in *Maislin* constitutes changed circumstances sufficient to warrant reopening proceedings in which the Commission issued its

decision under the Commission's previous negotiated rates policy.¹⁶

During the year, the Commission completed an intensive examination and reported findings concerning the motor carrier ratemaking process, rate bureau activities, discounting, and related issues.¹⁷ The report recognized the substantial escalation of discounting in the motor carrier industry over the past decade. It concluded, however, that based on the record before the Commission, discounts reflecting the increased competition within and between the various motor carrier sectors are consistent with the Motor Carrier Act of 1980's of increasing competition. The report also reviewed coincident pricing, a process by which carriers participate in a general rate increase through their rate bureau, but then effect the same or a similar rate increase in their individual tariffs before the rate bureau tariff becomes effective. The report concluded that, because most motor carrier rate levels are discounted to market-driven levels regardless of how they initially are set, coincident pricing often has no effect on the rates actually charged to most shippers. The Commission indicated that it would continue to address claims of unreasonable discrimination, predation, and destructive competition on a case-by-case basis.

The Commission issued decisions in a series of significant cases that had been held in abeyance pending comple-

¹⁴ No. 40510, *Jasper Wyman & Son et al.—Petition for Declaratory Order—Certain Rates and Practices of Overland Express, Inc.* (not printed), served May 24, 1991, notice published in *Federal Register* (56 FR 24091) on May 28, 1991.

¹⁵ *Rate Reasonableness and Unreasonable Practices*, 8 I.C.C.2d 61 (1991) (*Rate Reasonableness*).

¹⁶ See, e.g., No. 40386, *Gibbon Lumber Co., Inc.—Petition for Declaratory Order—Certain Rates and Practices of Marathon Transportation Company, Inc.* (not printed), served September 11, 1991; No. MC-C-30164, *Makita USA, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Mine Truck Lines, Inc.* (not printed), served September 10, 1991; and No. 40415, *Sugar Creek Packing Company—Petition for Declaratory Order—Certain Rates and Practices of Unzicker Trucking, Inc.* (not printed), served September 9, 1991.

¹⁷ *Investigation of Motor Car. Collective Practices*, 7 I.C.C.2d 388 (1991) (*Investigation*).

tion of the *Investigation* proceeding. In one case, the Commission considered a tariff item authorizing a carrier to issue credit for the difference between a filed tariff rate and an unfiled negotiated rate.¹⁸ The Commission found that the tariff item was designed to take advantage of the Commission's former negotiated rates policy or to accommodate goals in common with that policy through means of a filed tariff provision. The Commission therefore held the tariff item unlawful since, under the *Maislin* decision, the Commission cannot condone a tariff provision that would excuse a carrier from filing its rates in its tariffs.

The Commission denied a petition by the Regular Common Carrier Conference (RCCC) requesting that the Commission adopt either (a) a rule that would provide that a motor carrier may give a rate discount only to the customer paying the transportation charges, or (b) a disclosure rule requiring a motor carrier to apprise the transportation fee payor of any rate discounts or allowances being given to other parties to the transaction.¹⁹ The Commission found that RCCC's proposal essentially sought reconsideration of a prior decision and raised the same arguments that had been considered there.²⁰ The Commission concluded that the practices addressed by RCCC are consistent with beneficial competition and that any specific instances of harm could be handled on a case-by-case basis.

In another proceeding initiated by RCCC, the Commission voted to deny

a petition to institute a proceeding to (a) define a standard of reasonableness for minimum rates, (b) declare that motor carrier tariffs must reflect, clearly and explicitly, actual rates charged on particular traffic, and (c) require motor contract carriers to file tariffs stating their rates and charges.²¹ The Commission had not issued its decision in the proceeding when the fiscal year closed.

The Commission also denied a petition by RCCC asking the Commission to find unlawful and to strike all tariff items of motor common carriers of property (other than household goods) that either contain a range of discounts that can apply to a given shipment (range tariffs) or apply discounts applicable only for certain customer account codes.²² The Commission found no basis on the record to conclude that all range tariffs are unlawful, and it found nothing in law or policy that establishes a wholesale prohibition against publication of tariffs that do not include direct shipper identifications. The Commission indicated that RCCC or other parties could proceed on a case-by-case basis, formally challenging any tariff considered unlawful by submitting a protest to the tariff when it is filed and/or by bringing a formal complaint against a tariff that already is in effect.

The Commission instituted a proceeding requiring a motor common carrier to show cause why its filed "range" tariff should not be stricken from the Commission's files, or ordered cancelled. At issue is the sufficiency of rate disclosure. The Commission's action was taken in response to an informal complaint

¹⁸ *Consolidated Freightways Corp.—Negotiated Rates*, 7 I.C.C.2d 638 (1991).

¹⁹ Ex Parte No. MC-180 (Sub-No. 1), *Petition for Rulemaking—Discounting Practices* (not printed), served July 22, 1991.

²⁰ Ex Parte No. MC-180, *Petition for Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges* (not printed), served March 11, 1987.

²¹ Ex Parte No. MC-195, *Petition of Regular Common Carrier Conference for Establishment of Minimum Rate Standard and Other Relief* (decision pending), Open Conference vote July 18, 1991.

²² *Pet. for Declar. Order—Discounts and Customer Acct. Codes*, 8 I.C.C.2d 47 (1991).

brought by a competing carrier and was pending at the close of the fiscal year.²³

Shortly before the fiscal year began, in response to rapidly rising fuel prices resulting from the Persian Gulf Crisis, the Commission issued special tariff authorities (STAs) allowing motor carriers acting independently to effect fuel-related tariff increases on one day's notice. Following the end of Operation Desert Storm, the Commission determined that the emergency that had necessitated adoption of the short notice period had ended. It therefore required the termination of all tariff increases filed under the STA's, and it suspended their use.²⁴ The Commission suspended, rather than rescinded, the STAs in order to leave the authorities available for future use should circumstances warrant.

The Commission completed an investigation of the activities of the Household Goods Forwarders Tariff Bureau (HGFTB), a rate bureau whose membership consists of regulated household goods freight forwarders. Although the Commission determined that the bureau continued to engage in several activities for which antitrust immunity is required, it denied the bureau's application under 49 U.S.C. 10706 for approval of an amended collective ratemaking agreement and revoked the bureau's antitrust immunity for future collective actions.²⁵ The Commis-

sion determined that the HGFTB had failed to bear its burden of establishing that its collective activities enhance the goals of the National Transportation Policy, that the proposed collective ratemaking agreement would not have anti-competitive effects, and that anti-competitive effects would be outweighed by benefits to the public interest. The Commission advised the bureau that no immunity is needed to publish tariffs for members, to file independent actions for individual members, or to provide members support services such as securing and disseminating information that is publicly available.

Operating Rights

In a significant declaratory order proceeding, the Commission considered the impact of legislation enacted in Delaware²⁶ on motor carriers operating in interstate commerce.²⁷ The Delaware legislation required motor carriers transporting money and other valuables from or to points in Delaware to have a special State license, which involved paying licensing fees, obtaining a corporate surety bond, and having cargo insurance. The Commission found that the subject provisions of the State law are preempted by the Interstate Commerce Act and constitute an undue burden on interstate commerce. The State law could not be considered an acceptable exercise of the State's police powers, because its primary concern was protection of cargo rather than public safety. The Commission also found that, because the Commission's insurance regulations are comprehensive, the State cannot substitute its own, inconsistent requirements that would preclude interstate carriers from providing legitimate interstate services within the scope of their Federal licenses.

²³ No. 40641, *Morgan Drive Away, Inc. v. MODA 442—Show Cause Proceeding*, (not printed), served September 5, 1991.

²⁴ Special Tariff Authority No. 90-110, *Three Workdays Notice Period on Fuel Related Tariff Increases*, Special Tariff Authority No. 90-110 (Sub-No. 1), *Petition to Establish an Emergency Fuel Surcharge Program—Petition to Reopen*, and Special Tariff Authority No. 81-2500, *Fuel Related Increases in Rates and Charges* (not printed), served April 30, 1991.

²⁵ Section 5a Application No. 106, *Household Goods Forwarders Tariff Bureau* (not printed), served June 12, 1991, petition for stay denied in decision served August 12, 1991.

²⁶ The Transportation of Money and Valuables Act, Chapter 32, Title 5, of the Delaware Code.

²⁷ *Armored Car Delivery and Pickup in Delaware*, 8 I.C.C.2d 157 (1991).

In a similar matter, the Commission instituted a proceeding to determine whether certain requirements imposed by the State of Georgia on licensed, interstate motor carriers constitute a burden on interstate commerce and whether those requirements are preempted by Federal law.²⁸ Georgia had refused to register a carrier's interstate operating authority, on the grounds that the carrier's insurer was not licensed to do business in Georgia. The Commission has invited comments from interested parties, and the proceeding was pending at the end of the fiscal year.

The Commission adopted final revisions to its commercial-zone regulations,²⁹ to eliminate surplus and to update statutory citations.³⁰ It had initiated this proceeding in 1987 to re-examine regulations that had last been revised in 1976.³¹ The Commission declined to expand the territorial scope of the commercial zones of municipalities and the terminal areas of motor carriers and freight forwarders by revising the classic population-mileage formula. The Commission concluded that the data supporting the proposed expansions were obsolete and that consideration of any further changes should await the results of the 1990 Decennial Census.

The Commission has proposed to repeal its regulations³² governing the form and content of contracts between motor contract carriers and the shippers they serve.³³ After considering com-

ments that had been submitted by interested parties in response to an advance notice of proposed rulemaking,³⁴ the Commission preliminarily concluded that the regulations serve no regulatory purpose in today's competitive environment. The regulations had originally been adopted to further goals protecting common carriers, an approach that was repudiated by the Motor Carrier Act of 1980. The Commission stated that the repeal of the regulations would provide greater flexibility and speed to both shippers and carriers in negotiating and executing transportation contracts. The Commission also stated that motor carrier contracts should not be treated differently from other ordinary commercial transactions, and that the form and content of transportation agreements are better left to the parties to such agreements. A notice of proposed rulemaking was published, and the proceeding was pending at the end of the fiscal year.

During the year, the Commission denied a petition to reopen the proceeding³⁵ in which it had dismissed a complaint against a carrier's tariff provision excluding the transportation of common fireworks.³⁶ The petitioners based their arguments on the Supreme Court's *Maislin* decision, which limited the power of the Commission to apply its "unreasonable practices" jurisdiction under 49 U.S.C. 10701(a).³⁷ (See the "Rates" section for a discussion of *Maislin*.) The Commission noted that its decision in favor of the carrier had been based on an interpretation of the common carrier obligation and that, as Commission pol-

²⁸ No. MC-C-30190 [incorrectly numbered No. 40604], *State of Georgia Restrictions on Registration of Motor Carrier Operating Authority—Declaratory Order Proceeding* (not printed), served September 19, 1991.

²⁹ 49 CFR Part 1048.

³⁰ *Commercial Zones and Terminal Areas*, 7 I.C.C.2d 84 (1990).

³¹ *Commercial Zones and Terminal Areas*, 128 M.C.C. 422 (1976).

³² 49 CFR Part 1053.

³³ Ex Parte No. MC-198, *Contracts for Transportation of Property* (not printed), served September 11, 1991.

³⁴ *Id.* (not printed), served March 5, 1991.

³⁵ *B.J. Alan Co. v. United Parcel Service*, 5 I.C.C.2d 700 (1989), *aff'd sub nom. B.J. Alan Co. v. ICC*, 897 F.2d 561 (D.C. Cir. 1990).

³⁶ No. MC-C-30093, *B.J. Alan Company, Inc., et al. v. United Parcel Service, Inc., et al.* (not printed), served April 12, 1991.

³⁷ *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 110 S. Ct. 2759 (1990).

icy in the area does not conflict with the statute or Supreme Court precedent, petitioners' reliance on *Maislin* as a basis to reopen was misplaced.

Safety

In view of the Commission's continuing concern over motor carrier safety, it adopted revisions to its safety fitness policy during the fiscal year.³⁸ Its primary purpose in adopting the new policy was to meet the competing demands of: (1) the recently revised legislative agenda concerning transportation safety,³⁹ (2) DOT's responsive regulatory scheme and safety review priorities, and (3) the operational and competitive service realities in the motor carrier industry.

Under the revised policy, affecting both the licensing and finance dockets, only those motor carriers holding "Unsatisfactory" safety fitness ratings from DOT will be restricted from receiving operating authority. Unrated carriers and those holding "Conditional" safety fitness ratings (including applicants seeking passenger-carrier and hazardous-materials authorities) will no longer be issued one-year limited term authority. The revised policy is compatible with and reinforces the various statutory and regulatory revisions that recently have redefined the safety compliance environment for the motor carrier industry. The Commission believes that the revisions will enhance, rather than in any sense compromise, the Commission's safety oversight role and should promote the industry's ability to conduct safe and efficient motor carrier operations. After adopting the new policy, the

Commission commenced reissuing authorities—without term limitations—to those "Conditional"-rated and unrated carriers that had received one-year-term authority under the Commission's previous safety fitness policy.

Foreign Carriers

The Commission continued to receive and process applications by Mexican-domiciled motor carriers for certificates of registration authorizing operations into the United States, primarily into commercial zones of municipalities along the international boundary line. Because Congress eliminated the requirement for annual renewal of registration during the 1990 fiscal year, the number of applications declined from prior years.

Reflecting growing experience with the largely Spanish-speaking applicant group, the Commission again refined its OP-2 application form to make references to U.S. taxes easier to read and understand, and to suggest that applicants seek tax advice from the Internal Revenue Service. The Commission also improved its commercial-zone territorial description for Mexican carriers entering California through San Diego by describing more specifically in the certificates of registration how far the carrier can travel into the United States.

The Commission has continued to monitor the statutory requirement that it not issue certificates or permits under 49 U.S.C. 10922 or 10923 for operations by Mexican-domiciled motor carriers to points within the United States that extend beyond commercial zones. In appropriate situations, the Commission denied applications upon information that the applicants were domiciled in Mexico.⁴⁰

³⁸ *Safety Fitness Policy*, 7 I.C.C.2d 921 (1991), and 8 I.C.C.2d 123 (1991).

³⁹ The Motor Carrier Safety Act of 1990, Public Law No. 101-500, 104 Stat. 1213 (1990); and the Hazardous Materials Transportation Uniform Safety Amendments Act of 1990, Public Law No. 101-615, 104 Stat. 3244 (1990).

⁴⁰ See, e.g., No. MC-240168, *C.T.M. Trucking Corp., Common and Contract Carrier Application* (not printed), served May 28, 1991.

Household Goods

In response to a petition filed by the American Movers Conference (AMC), the Commission, after notice and comment, issued a decision finding that 49 U.S.C. 11910(a)(2) does not preclude the disclosure of shipper information in a consumer marketing and research program AMC intends to initiate.⁴¹ The Commission noted that the focus of Section 11910(a)(2) is to prevent economic harm to shippers, and it found nothing in the record to suggest that individual household goods shippers would be economically harmed by the limited release of their names and addresses under the circumstances involved. The Commission advised AMC that the decision did not address the lawfulness of the AMC plan insofar as it involves matters of Federal law outside the Commission's jurisdiction.

The Commission denied the application of the Household Goods Forwarders Tariff Bureau for approval of an amended collective ratemaking agreement and revoked the bureau's antitrust immunity for future collective actions.⁴² The Commission rejected the bureau's claim that regulatory protection in the form of antitrust immunity is necessary to prevent forwarders from being at a competitive disadvantage *vis-a-vis* household goods motor carriers. The Commission also found that the continuing effort to maintain collectively-determined forwarder rate levels might operate to slow the spread of individually negotiated and competitive rates to all markets and could have a negative impact on the small or infrequent house-

hold goods shipper in an inferior bargaining position. (See the "Rates" and "Freight Forwarders" sections for additional discussion of this proceeding.)

Prior to the beginning of the fiscal year, the Commission had instituted a declaratory order proceeding to review the broad question of the lawfulness of household goods discount tariffs that contain a range of discounts. The Commission is also considering the effect of binding estimate authority on the lawfulness of such tariffs.⁴³ The matter remains pending at the close of the fiscal year.

The number of complaints received against household goods carriers during fiscal year 1991 (2,536) declined to a new record-low from those received in any fiscal year since passage of the Household Goods Transportation Act of 1980. This year's data reflect an 11 percent reduction from the prior fiscal year, previously the record low-year for complaints received against household goods carriers.

Insurance

Throughout fiscal year 1991, the Commission continued to provide protection to the public by strictly enforcing its financial responsibility requirements. These regulations require all motor common and contract carriers, property brokers and household goods freight forwarders authorized to engage in transportation in interstate or foreign commerce, to have on file with the Commission and maintain on a continuous basis, certificates of insurance or other evidence of security at the prescribed minimum limits of liability.⁴⁴ The operating rights of these entities remain in effect only as long as Commission insurance requirements are satisfied. Those entities failing to comply with Commission

⁴¹ No. MC-C-30174, *Petition for Declaratory Order—American Movers Conference Consumer Marketing and Research Program—Section 11910(a)(2)* (not printed), served March 7, 1991.

⁴² Section 5a Application No. 106, *Household Goods Forwarders Tariff Bureau* (not printed), served June 12, 1991, petition for stay denied in decision served August 12, 1991.

⁴³ No. MC-C-30029, *Andrews Van Lines, Inc., et al.—Petition for Declaratory Order* (not printed), served July 20, 1987.

⁴⁴ 49 U.S.C. 10927.

financial responsibility regulations are prohibited from operating. Further, their operating authority is subject to the Commission's revocation proceedings.

During the fiscal year, the Commission received a total of 95,976 insurance filings. These filings included new and replacement certificates of insurance, surety bonds, and trust fund agreements, as well as approximately 21,770 notices of cancellations of evidence of insurance coverage. These cancellation notices led to the series of more than 42,500 revocation proceeding decisions. The operating rights of over 7,000 regulated entities were revoked, with nearly 4,800 revoked involuntarily for failure to file evidence of insurance or other security.

The Commission continued to review and grant applications filed by motor carriers for authority to self-insure their bodily injury and property damage and/or cargo liability insurance. To ensure that self-insured carriers, continued to provide adequate protection to the public, the Commission reviewed the claims handling and financial statements of these carriers on a periodic basis.

The Commission's Insurance Board granted waivers of bodily injury and property damage insurance requirements to freight forwarders of household goods. These waivers are conditional, and are valid only as long as these forwarders maintain provisions in

their tariffs to provide that they do not own or operate any motor vehicles upon the highways in the transportation of property; that they do not perform transfer, collection or delivery services; and that no motor vehicles are operated under their direction and control in the performance of transfer, collection and delivery service subject to Subchapter IV, Chapter 105, Subtitle IV of Title 49 of the United States Code. As of this date, the Commission has waived these requirements for approximately 245 freight forwarders of household goods.

The Commission instituted a proceeding to clarify and to consider modifications of its eligibility requirements⁴⁵ for insurance and surety companies to provide insurance and surety bonds for ICC regulated carriers. The Commission considered broadening its eligibility requirements to allow excess and surplus lines insurers who are not also primary insurers, to make security filings with the Commission.⁴⁶ Ultimately, the Commission clarified but did not amend its regulations. The Commission added the words "licensed or admitted" to make it clear that under the Commission's eligibility requirements, an insurance or surety company must be licensed in at least one State, or the District of Columbia, in order for its security filings to be accepted by the Commission. The clarification, which should eliminate any confusion, did not result in any substantive change to the regulations.⁴⁷

⁴⁵ 49 CFR 1043.8 and 49 CFR 1084.5.

⁴⁶ Ex Parte No. MC-5 (Sub-No. 11), *Revision of Regulations—Insurance and Surety Companies* (not printed), served July 16, 1990.

⁴⁷ *Revision of Regulations Governing Insurance and Surety Companies Making ICC Findings*, 7 I.C.C.2d 589 (1991).

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BUS COMPANIES

Financial Condition

Greyhound Lines, Inc. (Greyhound), is the Nation's only transcontinental bus company and accounts for more than 75 percent of the revenues generated by all Class I bus companies. Greyhound's earnings substantially improved during fiscal year 1991 compared to fiscal year 1990 when operations were adversely affected by a strike. For example, Greyhound reported a net carrier operating income of \$23.2 million for fiscal year 1991, compared to a net carrier operating loss of \$67.6 million for the same period of 1990. Net loss for fiscal year 1991 was \$8.3 million which was substantially less than the \$115.4 million net loss for the comparable period of 1990. Operating revenues rose slightly, by about one-third of one percent, and revenue passengers carried decreased 2.5 percent.¹

Due to a significant deterioration in its financial condition resulting from the strike that began on March 2, 1990, Greyhound filed for bankruptcy on June 4, 1990, pursuant to Chapter 11 of the Federal Bankruptcy Act. The carrier was able to maintain an adequate cash position during fiscal year 1991 and at the close of the fiscal year, Greyhound expected to receive approval from the U.S. Bankruptcy Court to emerge from bankruptcy and operate in accordance with a reorganization plan which was overwhelmingly approved by its creditors. Greyhound's prospects for continued viability were highly favorable at the end of fiscal year 1991 compared to the very uncertain prospects at the end of fiscal year 1990.

Net carrier operating income of nine of the largest regional intercity bus companies for fiscal year 1991 was almost \$7.7 million, which was 1.2 percent higher than the amount reported for the same period of 1990. Ridership declined about

3.7 percent while operating revenues rose by slightly less than one percent.

Operating Rights

The Commission considered a substantial number of motor carrier applications for authority to transport passengers. (See Appendix B, Table 1). Most of the common carrier applicants, and nearly all of the contract carrier applicants, sought authority to conduct charter and special operations, and the remainder sought authority to provide scheduled service over specified routes. The Commission considered a number of cases under its procedures for preempting State regulation in implementing its mandate for advancing the goals of the national transportation policy as applied to passenger carriers.

In a series of decisions in the exit area,² the Commission approved the discontinuance by Greyhound of passenger and package express services along three unprofitable routes in three States: Mississippi, California, and Louisiana.³ The Commission considered petitions by Greyhound for review of the respective State agencies' actions denying permission to discontinue service on the involved route. With respect to the California route, the Commission found that the variable costs of providing the involved services exceeded the revenues derived from them, that patronage along the routes was low, that alternative passenger and package service was available, and that no financial assistance to Greyhound had been offered. No timely objections to the petitions involving the Mississippi and

² 49 U.S.C. 10935, enacted in Section 16 of the Bus Regulatory Reform Act of 1982, Public Law 97-261, 96 Stat. 1102 (1982).

³ Respectively, Nos. MC-1515 (Sub-No. 413), *Greyhound Lines, Inc., Exit Petition—Mississippi* (not printed), served June 4, 1991; MC-1515 (Sub-No. 414), *Greyhound Lines, Inc., Exit Petition—California* (not printed), served July 11, 1991; and MC-1515 (Sub-No. 415), *Greyhound Lines, Inc., Exit Petition—Louisiana* (not printed), served July 16, 1991.

¹ Data are obtained from quarterly reports filed by Class I motor carriers of passengers.

Louisiana routes were filed, and, because the petitions were complete and properly filed, the Commission summarily granted the permission requested, as required under 49 U.S.C. 10935(d).

The Commission considered several petitions by passenger carriers seeking to reopen the proceeding in which the Commission had approved the purchase by GLI Acquisition Company (Greyhound) of the operating assets of Trailways Lines, Inc., and its stock interest in Continental Panhandle Lines, Inc.⁴ At the emergency request of Blue Ridge Lines, Ltd., and on the grounds of anticompetitive activity, the Commission afforded the carrier a temporary (45 day) access to three of Greyhound's bus terminals. The Commission acted in response to Greyhound's summary eviction of Blue Ridge from these terminals just before the peak holiday season and to afford time for the parties to negotiate possible long-term agreements for use of the terminals on a mutually acceptable basis.⁵ The Commission denied the request of another carrier to reopen the proceeding on the basis of allegations of anticompetitive activity through the use of incentive (promotional) fares, since the use of the fares was of short duration and had ceased.⁶ The Commission further declined to reopen the proceeding based on another carrier's allegations of other anticompetitive activity by

Greyhound. The Commission determined that the matters raised on petition did not warrant or justify regulatory intervention or the imposition of any new conditions on Greyhound.⁷

Rates

Six carriers initiated eight proceedings under the Commission's procedures⁸ for preempting State rate jurisdiction and authorizing intrastate rate increases in situations in which a State had denied, or failed to consider a request for, such increases. In each of the eight cases considered, the Commission found that the Massachusetts Department of Public Utilities had neither issued a timely decision on the original application, nor filed an answer to a petition for review. In each case, the Commission granted the petitioning motor carrier's request, finding that it had shown that its intrastate passenger fares were significantly lower than its current interstate fares for comparable services within the State.⁹

⁷ *GLI Acquisition* (not printed), served June 26, 1991.

⁸ See 49 CFR 1143.

⁹ Nos. MC-C-30176, *Bonanza Bus Lines, Inc.—Petition for Review—Massachusetts Intrastate Rates* (not printed), served November 30, 1990; MC-C-30177, *Basil S. Kinson, Inc., d/b/a Kinson Bus Lines, Petition for Review—Massachusetts Intrastate Rates* (not printed), served December 18, 1990; MC-C-30180, *Trombly Commuter Lines, Inc.—Petition for Review—Massachusetts Intrastate Rates* (not printed), served January 30, 1991; MC-C-30179, *American Eagle Motor Coach, Inc.—Petition for Review—Massachusetts Intrastate Rates* (not printed), served February 18, 1991; MC-C-30183, *Peter Pan Bus Lines, Inc.—Petition for Review—Massachusetts Intrastate Rates* (not printed), served May 6, 1991; MC-C-30184, *Plymouth & Brockton Street Railway Company, Petition for Review—Massachusetts Intrastate Rates* (not printed), served May 23, 1991; MC-C-30185, *Bonanza Bus Lines, Inc.—Petition for Review—Massachusetts Intrastate Rates* (not printed), served July 24, 1991; and MC-C-30187, *American Eagle Motor Coach, Inc., Petition for Review—Massachusetts Intrastate Rates* (not printed), served September 20, 1991.

⁴ *GLI Acquisition Company—Purchase—Trailways Lines, Inc., et al.*, 4 I.C.C.2d 591 (1988), affirmed by unprinted decision served October 6, 1988, *aff'd sub nom., Peter Pan Bus Lines, Inc., et al. v. Interstate Commerce Commission*, Nos. 88-1556 and 88-1567 (D.C. Cir. May 8, 1989) (per curiam).

⁵ No. MC-F-18505, *GLI Acquisition Company—Purchase—Trailways Lines, Inc.; GLI Acquisition Company—Control—Continental Panhandle Lines, Inc.* (not printed), served December 10, 1990, corrected decision served December 12, 1990; petition for clarification and modification denied by decision served February 8, 1991.

⁶ *GLI Acquisition* (not printed), served March 19, 1991.

Service

In a significant decision, the Commission revised its regulations¹⁰ limiting smoking on interstate passenger-carrying motor vehicles. The new regulations prohibit smoking (including the carrying of lit cigars, cigarettes, and pipes) on vehicles transporting passengers in scheduled or special service in interstate commerce. The Commission cited convincing evidence from the Surgeon General that environmental tobacco smoke constitutes a health hazard, and it noted that the evidence from the bus industry and its passengers overwhelmingly favored prohibiting smoking on all buses for which tickets are sold to individual passengers. The Commission declined to extend the prohibition to charter service. Smoking on chartered buses will be permitted or prohibited at the option of the operator or the group chartering the bus.¹¹

The Commission denied a joint petition by the American Bus Association and the United Bus Owners of America to institute a rulemaking proceeding proposing to prohibit, with certain exceptions, the consumption of alcoholic beverages on interstate buses operated in scheduled service over regular routes.¹² The Commission found that it has jurisdiction to regulate the subject, however, it determined that it was clear that carriers already have taken steps to prohibit consumption of alcoholic beverages on board scheduled buses. Further, noting that the Drunk Driving Prevention Act of 1988¹³ ultimately left the issue of drunk driving to the States, the Commission indicated its hesitation to promulgate regulations in an area Congress has reserved for the States.

The Commission proposed¹⁴ to amend its regulations at 49 CFR 1063.8 to reflect the enactment of the Americans with Disabilities Act (ADA).¹⁵ Section 1063.8 currently provides that no carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, and sets forth basic requirements for assistance to such persons and for the provision of terminal accommodations. The proposed amendment would: (1) replace most of the present provisions of the rule with a cross-reference to the ADA and the implementing regulations issued by the Departments of Justice and Transportation; and (2) modify the provision for waivers of fares for attendants and service animals accompanying passengers with disabilities in order to comport more closely with the spirit and requirements of the ADA. The rules that would be replaced under the Commission's proposal have been rendered obsolete by the requirements of the ADA, which specifically delegated jurisdiction in those areas to the other agencies. The Commission's proposal was pending at the close of the fiscal year.

In fiscal year 1991, 262 complaints were received by the Commission from passengers utilizing intercity passenger service. These figures represent a 13 percent increase from the 231 complaints received during fiscal year 1990. The majority of the complaints involved passenger carriers' failure to provide scheduled service; delays in providing service in accordance with published operating schedules; service provided by unauthorized carriers; and occasional in-transit service failures, such as equipment breakdowns. Twenty-two of

¹⁰ See 49 CFR 1061.

¹¹ *Prohibition of Smoking on Interstate Passenger Vehicles*, 7 I.C.C.2d 260 (1991).

¹² Ex Parte No. MC-197, *Limitation of Consumption of Alcoholic Beverages on Buses* (not printed), served January 11, 1991.

¹³ Public Law 100-690, 102 Stat. 4521, 23 U.S.C. 410 (1988).

¹⁴ Ex Parte No. MC-200, *National Bus Traffic Association, Inc.—Petition for Rulemaking—Special Transportation Arrangements for Persons with Disabilities*, open conference vote September 10, 1991.

¹⁵ Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101, et seq. (1990).

the complaints received involved overcharges in connection with rates or charges published in tariffs governing carrier assessments for services provided, and 41 complaints involved dissatisfaction with the carrier's handling and processing of claims.

Because of Congressional and Commission concerns about motor passenger service being provided to the public, the Commission instituted a national program of monitoring the operations of Greyhound Lines, Inc. During the year this program included 26 ride-on bus checks and 30 checks of Greyhound terminals. At the close of the year, discrepancies discovered from the monitoring activities were being handled with the carrier for correction. The monitoring program is being extended to cover other motor passenger carriers. In addition, the Commission continued its program of passenger

carrier inspections at tourist attractions and recreational centers to determine carrier compliance with the ICC's insurance and licensing regulations. This program consisted of 27 road checks and resulted in the inspection of 559 passenger vehicles. Most instances of non-compliance discovered were corrected by voluntary discontinuance of service by carriers until operating authority was secured and evidence of insurance was filed with the Commission. In some instances, non-compliance with insurance regulations required enforcement actions. These actions resulted in 11 consent agreements and seven civil injunctions. Enforcement actions against motor passenger carriers for violations other than insurance resulted in three civil injunctions and one civil forfeiture action. The Commission also conducted 16 compliance surveys of passenger carriers.

FREIGHT FORWARDERS, WATER CARRIERS, PROPERTY BROKERS, AND PIPELINES

Household Goods Freight Forwarders

The Commission retains jurisdiction over the household goods freight forwarding industry and continues to license household goods freight forwarders as reflected in Appendix B.

In a significant decision, the Commission denied the application of the Household Goods Forwarders Tariff Bureau for approval of an amended collective ratemaking agreement and revoked the bureau's antitrust immunity for future collective actions.¹ The Commission found that the bureau had failed to bear its statutory burden of establishing that its agreement would further the National Transportation Policy (NTP).² The decision took note of the experience of the U.S. Department of Defense (DOD), an extensive user of household goods freight forwarder services which, pursuant to government procurement rules, cannot utilize forwarders under collective pricing arrangements. The Commission found that forwarders serving DOD have had no difficulty adjusting their rates and remaining competitive with household goods carriers and that DOD has benefitted from improved service and declining rates, products of competition fostered by the elimination of collective pricing. The Commission concluded that individual forwarders, if prohibited from collusion, would likely bargain more effectively and that competitive and efficient rate levels would more promptly be realized.

Water Carriers

The Commission's jurisdiction over water carriers is somewhat limited, as the majority of water carrier operations are either exempt from Commission

regulation by statute or subject to the jurisdiction of the Federal Maritime Commission. In general, the Commission regulates the interstate transportation of non-bulk commodities and passengers, other than in ferry service. The Commission continued to license water carriers during fiscal year 1991, as indicated in Appendix B, Table 1, but it did not issue any decisions materially affecting water carriers or reflecting new or changed policies regarding regulation of their operations.

Under the law, the Commission has no jurisdiction over ferry transportation unless it makes a specific finding that exercise of its jurisdiction is necessary to carry out the national transportation policy.³ Prior to the start of the fiscal year, in a court-remanded proceeding, the Commission issued a decision interpreting the scope of the ferry exemption.⁴

In its decision, the Commission discussed the history of the statutory ferry exemption and addressed issues concerning the directness of the route, the character and frequency of service, and the distance of the route. The Commission found that the proposed operation was a ferry service. It based its finding on a conclusion that prior decisions, to the extent that they may have arbitrarily limited the permissible length of a ferry route, misconstrued the significance of distance and, therefore, interpreted the definition of a ferry too rigidly. The Commission found that what is important is whether the service at issue acts as a public highway connecting two points separated by water. During the fiscal year, the decision in *Viking* was affirmed on judicial review.⁵

¹ Section 5a Application No. 106, *Household Goods Forwarders Tariff Bureau* (not printed), served June 12, 1991, petition for stay denied in decision served August 12, 1991.

² 49 U.S.C. 10706(c).

³ 49 U.S.C. 10544(a)(4).

⁴ *Viking Starship, Inc.-Common Carrier Application*, 6 I.C.C.2d 228 (1989).

⁵ *Cross-Sound Ferry Services, Inc. v ICC*, 934 F.2d 327 (D.C. Cir. 1991).

Shortly after the close of the fiscal year, the Commission dismissed a proceeding that had been held in abeyance at the applicant's request pending judicial review of *Viking*.⁶ As in *Viking*, there had been a question as to whether the proposed service constituted an exempt ferry service. Inasmuch as the applicant had not asked the Commission to recommence processing its application, the Commission dismissed it without prejudice to applicant's refiling a new application.

In December of 1991, the Commission and the Federal Maritime Commission issued a joint policy statement aimed at establishing procedures to be followed by carriers operating in the "domestic offshore" trades and clarifying which agency has jurisdiction over certain transportation services.

Property Brokers

During the year, the Commission denied petitions to institute a rulemaking proceeding to change the minimum required level of financial security for property brokers and to more strictly regulate broker pricing and payment practices.⁷ Petitioners requested that the minimum property broker surety bond level be increased from \$10,000 to \$100,000. After thoroughly reviewing the history of property broker regulation, the Commission noted that the number of problems in the broker industry is relatively small and generally involves unlicensed brokers that would be unaffected by any new regulation. The Commission concluded that the largely deregulated broker market generally works well and that the requested

relief would be likely to harm the public by discouraging law abiding brokers from entering or continuing in the business. The Commission emphasized the importance of carriers' and shippers' utilizing sound business practices in their dealings with brokers, but it also reminded petitioners that administrative and commercial remedies remain available to them when needed.

Consistent with its commitment to monitor the brokerage industry, the Commission considers very seriously any evidence tending to show that an applicant lacks requisite financial integrity and stability to conduct regulated broker activities. In one proceeding, the Commission denied an application for a broker's license, finding that one of the principals of the applicant was involved with another brokerage firm that had gone out of business, failing to pay transportation charges or satisfy claims.⁸ The Commission concluded that the applicant was likely to be the alter ego of the defunct broker. Significantly, the Commission noted that there are occasions when the required \$10,000 security bond is insufficient to fully indemnify the public and that an applicant's having obtained a bond is not, standing alone, sufficient to demonstrate its financial integrity.

Pipelines

In a landmark decision, the Commission ruled that it, rather than the Federal Energy Regulatory Commission (FERC), has jurisdiction over the transportation of anhydrous ammonia by pipeline.⁹ Since the creation of FERC in 1977, there had been no question of

⁶ No. W-271 (Sub-No. 4), *The Bridgeport and Port Jefferson Steamboat Co., Extension—Connecticut and New York Ports* (not printed), served December 13, 1991.

⁷ Ex Parte No. MC-5 (Sub-No. 9), *Petition for Investigatory Rulemaking Transportation Broker Bonds* (not printed), served August 23, 1991.

⁸ No. MC-237306, *Global Distribution Services, Inc., Broker (Property) Application* (not printed), served September 4, 1991.

⁹ *Gulf Central Pipeline Co.-Pet. For Declaratory Order*, 7 I.C.C. 2d 52 (1990), *aff'd mem. sub nom. CF Industries, Inc. v. ICC and USA*, No. 90-1516 (D.C. Cir. June 6, 1991).

FERC's jurisdiction in this area. However, in March 1990, FERC dismissed a rate complaint concerning anhydrous ammonia moving by pipeline for lack of jurisdiction. That complaint and a petition for declaratory order on the jurisdictional issue were then filed with this Commission, and the Commission agreed with FERC that the Interstate Commerce Commission retains jurisdiction over this type of pipeline transportation. The Department of Energy Organization Act (DOE Act)¹⁰ supports the Commission's assertion of jurisdiction because it does not specifically list anhydrous ammonia, as subject to FERC's jurisdiction and its legislative history does not indicate any Congressional intent to transfer this jurisdiction to FERC. Moreover, the goals of the DOE Act, to coordinate energy policy and programs, would not be furthered by FERC's assertion of jurisdiction over

pipeline movements of anhydrous ammonia. Now that the jurisdictional issue has been resolved, the parties are conducting discovery.

In another pipeline rate complaint case, involving the movement of phosphate by slurry pipeline, the Commission denied a petition to reopen and reconsider a prior decision.¹¹ The Commission held that the Interstate Commerce Act does not require a showing of market dominance to establish its jurisdiction to examine maximum reasonable pipeline rates. This conclusion did not preclude Commission examination of market-based ratemaking factors such as market power and competitive factors to help judge the reasonableness of pipeline rates. On July 16, 1991, the Commission held an oral argument on the appropriate methodology to be used to determine maximum reasonable pipeline rates.

¹⁰ Public Law No. 95-91, 91 Stat. 565 (1977), 42 U.S.C. 7155.

¹¹ Docket No. 40131 (Sub-No. 1), *Ashley Creek Phosphate Company v. Chevron Pipe Line Company, et al.* (not printed), served August 31, 1990.

INTERMODAL TRANSPORTATION

Consolidated Grain and Barge Company (CGB) (a noncarrier controlling two motor carriers) and River Rail, Inc., its wholly-owned noncarrier subsidiary, were granted an exemption from the statute to acquire control through stock purchase of MG Rail, Inc. (MGRI), a Class III railroad.¹ The control does not affect service to shippers or change MGRI's operations. The acquisition does not reduce competition because MGRI is a terminal railroad in Jeffersonville, Indiana, that cannot compete with the CGB-controlled motor carriers.

While most trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service is exempt from economic regulation under the Commission's class exemption, the substitution of rail service for a portion of a motor carrier's authorized service ("Plan I" TOFC/COFC service) is not. However, requests for Plan I exemptions may be considered on a case-by-case basis.² This year the Commission received its first request for a Plan I exemption. The Commission expressed its intent to grant the exemption, but sought public comment before the agency acted.³ The Commission is now reviewing the request in the light of opposition filed by a motor carrier rate bureau, the Colorado Public Utilities Commission, and competing motor carriers.

Prior to fiscal year 1991, the Commission determined that it has exclusive jurisdiction to regulate both the water and motor segments of certain joint, through movements between Puerto Rico and inland points in the United States.⁴ Subsequent to that determination, a water common carrier and its motor carrier subsidiary sought a declaratory order from the Commission as to the proper forum for a complaint challenging its service between Puerto Rico and the U.S. Such a complaint had been filed against the petitioners with the Federal Maritime Commission. The carriers were operating under a joint tariff filed with the Commission. The Commission determined that it has primary and exclusive jurisdiction to judge the lawfulness of tariffs filed with the ICC, therefore, a petitioner challenging the nature of the service provided under that tariff initially must do so before the Commission.⁵ However, on examining the service described by the petitioners, the Commission found that the purported motor carrier portion of the service simply constituted loading and unloading operations that were part of the fundamental water carrier obligation. The Commission concluded, then, that the described service was a port-to-port water carrier operation, not an intermodal operation subject to Commission jurisdiction.

¹ Finance Docket No. 31769, *Consolidated Grain and Barge Company and River Rail, Inc.—Control Exemption—MG Rail, Inc.* (not printed), served January 16, 1991.

² See *Improvement of TOFC/COFC Regulations*, 6 I.C.C.2d 208 (1989).

³ Finance Docket No. 31729, *Colorado-Denver/Warehouse Delivery, Inc.—Exemption of Highway TOFC Service From Regulation* (not printed), served January 24, 1991.

⁴ No. MC-C-30017, *Valley Freight Systems, Inc. v. Trailer Marine Transport Corporation* (not printed), served July 25, 1988.

⁵ *Puerto Rico Maritime et al.—Pet. for Declar. Order*, 7 I.C.C.2d 205 (1990), petitions for stay or postponement of effective date denied in No. MC-C-30168, *Puerto Rico Maritime Shipping Authority and PRMMI Trucking Inc.—Petition for Declaratory Order* (not printed), served December 11, 1990.

ENERGY AND ENVIRONMENT

Energy and environmental issues are addressed by the Section of Energy and Environment (SEE) within the Commission's Office of Economics. SEE fulfills its responsibilities primarily through its independent environmental review of cases, which includes preparation of environmental impact statements or environmental assessments, and advice to the Commission on environmental matters in its decision-making. During fiscal year 1991, SEE prepared over 300 environmental documents for cases that included railroad abandonments, acquisitions, and constructions.

In conducting its environmental review, SEE examines the impact of proposed actions on the environment and recommends conditions to mitigate environmental impacts. In so doing, SEE considers the requirements of the National Environmental Policy Act (NEPA),¹ the National Historic Preservation Act,² the Endangered Species Act,³ the Coastal Zone Management Act,⁴ the Energy Policy and Conservation Act (EPCA),⁵ the Clean Water Act,⁶ and other pertinent environmental statutes. SEE works closely with various Federal, State, and local agencies and concerned parties to ensure that the environmental impact of proposed actions are fully considered and effective mitigation is imposed. Conditions imposed by the Commission in the past year typically have pertained to the protection of historic resources, wetlands and other water resources, threatened or endangered species, public safety, and land use.

Rulemaking

The Commission adopted a comprehensive revision of its environmental rules.⁷ These rules which became effective September 29, 1991, strike a necessary and reasonable balance between the Commission's statutory directives and the various environmental statutes with which the agency must comply. The new regulations (1) combine the Commission's prior rules implementing NEPA and EPCA; (2) revise and clarify the information requirements for environmental and historic reports; (3) provide for broad distribution of environmental reports to various Federal, State, and local agencies; (4) eliminate unnecessary requirements; and (5) reclassify and clarify the type of actions for which environmental and/or historic reports and analyses are required.

More specifically, the revised rules improve public notice and opportunity for participation in all ICC environmental analyses. For example, they require applicants to include more complete information in their environmental reports, and to consult with and distribute these reports to various Federal, State, and local agencies early in the planning process. In addition, the revised rules require a local newspaper notice for all rail abandonment exemption proposals. This requirement is intended to provide greater notice to the general public regarding abandonments, and to ensure ample opportunity for public participation in the process. The new rules also address how the agency will conduct historic review under NHPA. In so doing, they clarify historic information requirements and exempt certain actions from historic review. Additionally, the revised rules permit the use of third-party consultants for preparing environ-

¹ 42 U.S.C. 4331-4335.

² 16 U.S.C. 470 et seq.

³ 16 U.S.C. 1531-1542. Also see the implementing regulations of U.S. Fish and Wildlife Service and National Marine Fisheries Service, 50 CFR 402.

⁴ 16 U.S.C. 1451 et seq., and see 15 CFR Part 930.

⁵ 42 U.S.C. 6362(b)

⁶ 33 U.S.C. 1344, and see 33 CFR 323.1.

⁷ Ex Parte No. 55 (Sub-No. 22A), *Implementation of Environmental Laws*, 7 I.C.C.2d 807 (1991).

mental analysis. In sum, these new rules allow the applicants, the public, other interested parties and SEE to better identify and more expeditiously resolve environmental concerns.

Rail Line Constructions

Rail construction activity continued at an unprecedented level. In the past, the Commission normally processed an average of one construction case per year. This fiscal year, SEE examined over 20 rail construction proposals. Approximately 14 of these construction projects involved active environmental review while the other projects involved only preliminary consultations. These projects which are located throughout the country include the States of Alabama, Florida, Indiana, Illinois, Maine, Mississippi, Missouri, Montana, Ohio, North Carolina, Nevada and California. They vary in purpose, size, and the complexity of environmental impact. All of these proposals, even at the pre-filing stage, require some type of environmental analysis and review.

A major development in the construction area has been the large number of utilities that are seeking to construct rail lines to access and/or secure competitive rail access to various sources of coal. Many of these utilities are pursuing rail construction as a way to obtain low sulfur coal in order to meet the new sulfur dioxide emission levels mandated by the 1990 Clean Air Act amendments. Other purposes for rail constructions include improved operational efficiencies, access to new port facilities, and high-speed passenger service.

The Commission completed environmental documentation for a number of rail construction cases. One case involved the construction of a rail line to provide competitive rail service to an electric generation plant in Joppa, Illinois. In this case, SEE recommended conditions to protect water quality, wildlife habitat, vegetation control, and

safety. SEE also recommended consultation between the railroad and appropriate local authorities.⁸ Environmental documentation was completed for a case in Pascagoula, Mississippi,⁹ which involved a proposal to construct a 2.3 mile line to serve a new port facility where most of the proposed right-of-way is located in or near waterways or wetlands, and woodlands. The environmental document included a number of recommendations to protect aquatic species, water resources, historic resources, public safety and other areas of the environment. SEE completed environmental documentation for two smaller construction projects that involved the construction of 2,096 feet of connecting track,¹⁰ and the construction of less than a mile of rail line to serve an industrial park.¹¹

Although some of the projects are relatively small, they still require a careful and exhaustive environmental review because of the potential for significant environmental impact. For example, the Indiana and Ohio Railway Company seeks authority to construct a 2.9 mile rail line over an abandoned right-of-way to connect two separate line segments in order to improve operating efficiency. Preparing the Environmental Impact Statement (EIS) required extensive field inspections, on-going consultations,

⁸ Finance Docket No. 31656, *Joppa and Eastern Railroad Company—Construction Exemption—Joppa, IL*, environment assessment served September 7, 1990, final environmental document, November 20, 1990.

⁹ Finance Docket No. 31536, *Jackson County Port Authority D/B/A Greenwood Island Terminal Railroad, Construction of a Line of Railroad at Greenwood Island, Pascagoula, Mississippi*, environmental assessment served July 25, 1991.

¹⁰ Finance Docket Nos. 31850 (Sub-No.1) and 31651 (Sub-No. 1), *Burlington Northern Railroad Company—Construction at Atmore, AL*, environmental assessment served April 22, 1991.

¹¹ Finance Docket No.31680, *Mokena Illinois Railroad Company—Construction in Will County, Illinois*, environmental assessment served October 19, 1990.

and public scoping meetings¹² amid considerable controversy. SEE prepared a Draft Environmental Impact Statement which recommended modifications to applicant's proposed route as well as measures to protect the environment and to help mitigate potential impacts to public health and safety.¹³ SEE is currently in the process of preparing a Final EIS that will take into account the public comments to the Draft EIS.

Another major construction case is the Tongue River Railroad's proposed 40-mile extension of an already authorized 82 mile line to access low-sulfur coal in southeastern Montana.¹⁴ SEE is in the process of preparing a Draft EIS which will address the environmental concerns associated with this project. This document will be made available to the public for comment and all such comments will be considered in preparing the Final EIS. SEE has already held numerous consultations as well as public meetings to identify environmental concerns and to solicit comments on the scope of the EIS. Among the potentially significant environmental issues identified were concerns regarding the impacts of the construction on Native Americans, particularly the Northern Cheyenne Indians and their sites of cultural or religious significance, protected plant and animal species, water quality in the Tongue River, and adjacent farming and ranching activities. A number of Federal, State, and local agencies, Native Americans, citizens' groups, and in-

dividuals are participating in the EIS process to ensure that environmental impacts are fully considered.

SEE continued to participate as a cooperating agency in the preparation of an EIS conducted jointly by the Department of Interior's Office of Surface Mining, Reclamation and Enforcement and the Montana Department of State Lands. This document will address environmental concerns connected with the permitting of coal mining activities in the Bull Mountain area near Roundup, Montana, and will embrace an analysis of the construction of approximately 35 miles of rail line to afford access to the proposed mine.

During this fiscal year, SEE conducted numerous pre-filing environmental consultations, field surveys, and briefings for a number of new construction projects. The impetus for most of these proposals is the need of power generating facilities and coal mines to secure new or alternate rail access. Also, SEE has consulted with the Federal Railroad Administration, various state agencies, and technical consultants regarding possible high speed passenger service such as the proposed Anaheim, California, to Las Vegas, Nevada, rail line.

Since rail line construction is the type of Commission licensed activity that has the most potential for environmental impacts, considerable staff resources have been devoted to analysis of these activities. Also, informal consultations with parties planning to construct rail lines indicate that the trend toward increasing construction activity will continue.

Finance Transactions

The Commission conducted environmental reviews for approximately 180 railroad finance transactions during the fiscal year. These included completion of final environmental documentation for the acquisition of approximately 1,400 miles of rail line and trackage rights from

¹² These scoping meetings were held in the vicinity of the project area in January of 1989.

¹³ Finance Docket No. 31320, *Indiana & Ohio Railway Company Construction and Operation of a Line of Railway in Butler, Warren and Hamilton Counties, Ohio*, draft environmental impact statement served May 17, 1991.

¹⁴ Finance Docket No. 30186 (Sub-No. 2), *Tongue River Railroad Company—Construction and Operation of Additional Rail Line From Ashland To Decker in Rosebud and Big Horn Counties, Mt.*, filed June 28, 1991.

a northeastern carrier by a Canadian carrier.¹⁵ In that proceeding, conditions were recommended to protect historic properties in Pennsylvania and in New York. Conditions to protect other historic properties were recommended in approximately 30 other finance transactions. Most of the other finance transactions involved rail line acquisitions, lease and operations, and trackage rights.

Rail Line Abandonments

SEE conducted environmental review for approximately 125 abandonments during the fiscal year. In approximately 50 abandonments, the Commission imposed conditions related to the salvage of rail properties, as recommended by SEE. In approximately 30 of these cases, the Commission consulted with the U.S. Army Corps of Engineers, U.S. Coast Guard, and state or local authorities to determine any necessary measures to mitigate impacts on water resources, including wetlands.

SEE routinely consults the U.S. Fish and Wildlife Service and State officials regarding the potential impact of Commission-approved actions on endangered or threatened species. During the past fiscal year, SEE recommended and the Commission imposed 26 conditions designed to protect wildlife. These conditions usually imposed limitations on salvage activities or required consultation with the appropriate Federal or State agency prior to salvage. Limitations on salvage activities included restricting salvage to certain times of the year when species of concern are not present or breeding in the area and limiting salvage to the right-of-way to prevent disturbing nearby wildlife habitat.

Public concern over Commission proceedings involving hazardous materials and waste sites has heightened. At the close of the fiscal year, SEE was in the process of reviewing several cases involving hazardous materials/sites including the proposed abandonment of approximately 71 miles of rail line, a portion of which is actually located in a Superfund site.¹⁶ Also, there is concern that the right-of-way outside the Superfund site may be contaminated. A major issue is the risk to the environment and human health and safety if the right-of-way is disturbed. SEE has initiated an investigation regarding the extent of contamination and the potential impacts of salvaging this line if abandonment is approved. In the interim, SEE has recommended a condition prohibiting any salvage pending its investigation and consultation with the U.S. Environmental Protection Agency. Also, to better address concerns in this area, the Commission's new environmental rules require carriers to include in their environmental reports detailed information concerning hazardous materials and waste sites. The new rules specifically require environmental documentation for water carrier licensing involving the transportation of hazardous materials.

Historic Review Process

In over 70 cases this fiscal year, historic resources conditions were imposed to protect historic sites and structures. These conditions required the railroad to retain its interest in and refrain from altering potentially historic sites or structures until completion of the historic review process required by the National Historic Preservation Act.¹⁷ Based on extensive consultations with

¹⁵ Finance Docket No. 31700, *Canadian Pacific Ltd.—Purchase and Trackage Rights—Delaware and Hudson Railway Company*, final environmental recommendation issued November 19, 1990.

¹⁶ Docket No. AB-33 (Sub No. 70), *Union Pacific Railroad Company—Abandonment—Between Plummer and Mullan in Benewah, Kootenai, and Shoshone Counties, Idaho*.

¹⁷ 16 U.S.C. 470.

appropriate historic officials, SEE has worked toward identifying historic properties, assessing whether the proposed actions adversely affect these properties, and determining how to best mitigate any adverse impacts.

In instances where all parties agree on appropriate mitigation, a memorandum of agreement (MOA) is signed by all the parties and transmitted to the Advisory Council on Historic Preservation for its approval. The successful completion of an MOA is a substantial undertaking, involving extensive and lengthy negotiations with all the parties. Once appropriate mitigation is developed, a railroad can then fully exercise its abandonment authority. SEE has made progress in this area as it has completed or engaged in negotiations on approximately 12 MOA'S. In one abandonment case, the MOA provides for the railroad to document an historic bridge to the level of recordation set by the National Park Service.¹⁸ Another MOA stipulates that the historic right-of-way be preserved through an interpretive marker describing the line's historic significance to the area.¹⁹ In one particularly difficult case, the Commission and the involved parties are finalizing an MOA that provides for an ore dock and approach trestle in Michigan to be recorded to Historic American Engineering Record standards.²⁰

In some cases, SEE has been able, without an MOA, to reach agreement with the railroads, historic preservation officials, and trail groups regarding preservation of historic rights-of-way

and structures.²¹ In instances where the Advisory Council on Historic Preservation does not approve a memorandum of agreement or no agreement is reached, the Commission must afford the Advisory Council an opportunity to comment on the action's effect on historic resources. The Commission must then consider the Advisory Council's comments in reaching its decision.

The historic review required by Section 106 of the National Historic Preservation Act is a multi-step and time-consuming process that is not always compatible with the expedited time frames applicable to many Commission proceedings. The identification of historic properties is the biggest hurdle faced by the Commission in completing this process. SEE has consulted with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and other appropriate interests to develop workable approaches. This cooperative effort is reflected in the Commission's new environmental rules. Specifically, the revised rules set forth specific information requirements to expedite the identification of historic properties and exempt from historic review those actions that rarely affect historic properties. The new rules also reflect the Commission's statutorily limited role in the protection of historic property. The Commission will continue to work closely with historic preservation officials to protect historic properties subject to its jurisdiction.

Trails and Public Use/ Public Assistance

SEE responded to numerous public inquiries regarding transportation environmental concerns, the Commission's

¹⁸ Docket No. AB-32 (Sub-No. 43), *Boston and Maine Corporation—Springfield Terminal Railway Company—Abandonment and Discontinuance of Service—in Hartford County, Connecticut.*

¹⁹ Docket No. AB-6 (Sub-No. 311X), *Burlington Northern Railroad Company Abandonment Between Lewistown and Heath, in Fergus County, Montana.*

²⁰ Docket No. AB-303 (Sub-No. 5X), *Wisconsin Central Ltd.—Abandonment Exemption—in Marquette County, MI.*

²¹ Docket No. AB-345X, *Bad Water Line—Abandonment Exemption in Fremont County, WY.*

environmental review process, and trails/public use of railroad rights of way. Additionally, SEE conducted on-going consultations with Federal, State, and local agencies to ensure that appropriate mitigation was recommended to protect the human environment. With respect to trails and public use, SEE includes in all its environmental documents for abandonment cases a discussion of the

trails/public use procedures and the potential suitability of the property for public use. In addition, the new environmental rules specifically require railroads to provide information concerning the property's suitability for public use as well as local newspaper notices for abandonment exemptions in order to notify the public of such exemptions and the availability of trails/public use options.

TARIFFS

The 1.3 million common carrier freight tariff filings of fiscal year 1991 reflect a modest decrease from the 1.4 million tariff filings in fiscal year 1990. The steady receipt of tariffs at this level indicates continuation of the intense competition prevailing throughout the transportation industry.

Motor carrier tariff filings remained nearly constant at slightly over one million, and rail tariff filings decreased minimally to 100,000. International ocean/land intermodal tariff filings were unchanged at 76,000. Water carrier filings increased from 32,000 to over 37,000. The total of passenger tariff filings by all modes decreased to 2,800 from the previous year's filings of 3,200.

The 37,000 new rail contract filings of fiscal year 1991 is a 10 percent increase over the 34,000 contract filings of fiscal year 1990, and reveals that contract pricing continues to be an attractive alternative to tariff pricing by a significant segment of the shipping public.

Railroads took only minimal advantage of their authority to file electronic tariffs, and the Commission does not anticipate increased electronic filing activity in fiscal year 1992. The motor carrier industry is not yet authorized to file electronic tariffs, and at this time we see no urging on their part for this authority.

Informal Rate Cases

The Commission's Bureau of Traffic used its informal procedures to settle 5,381 cases concerning disputes over rate and tariff matters during fiscal year 1991. This simple and inexpensive process permitted the settlement of most tariff disputes without the need for the institution of time-consuming and costly formal procedures. Several hundred of the disputes involved freight bill claims by auditors and collection agencies for alleged improperly underpaid freight bills of bankrupt motor carriers and freight forwarders. The Bureau concluded that many of the claims were not

properly supported and, consequently, improper claims against shippers and receivers of freight were withdrawn.

The Commission's informal rate settlement process is available to the public. The expertise of Commission staff is made available to parties to help resolve disputes as well as avoid future disputes.

The Commission's special docket procedure permits rail and water carriers to seek authority to refund or waive the collection of admittedly unreasonable charges. During fiscal year 1991, 689 special docket cases were processed authorizing reparations and waivers amounting to \$7,439,501.

Through the Commission's informal complaint proceedings, rail or water shippers may prevent expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaints. If the carrier in question agrees that a particular movement involves overcharges or that the charges are unreasonable, refunds or waivers can be made without the need for formal procedures. The ICC processed four such cases on the informal complaint docket during fiscal year 1991.

Suspension/Special Permission Board

The Suspension/Special Permission Board is an employee Board established by the Commission to act initially for the Commission on matters involving surface carrier tariffs, rules, rates, charges and railroad contract discovery petitions.

Matters of suspension involve new or revised rates, charges, or rule provisions that are filed with the Commission in tariff form and concern the interstate transportation services provided by the nation's rail, motor, and domestic water carrier industries. Upon request of interested or affected parties, or on its own motion, proposed tariff changes are considered for possible investigation and/or suspension by the

Suspension/Special Permission Board or by the entire Commission. Decisions of the Board are subject to reconsideration by the Commission.

During fiscal year 1991, the Suspension/Special Permission Board reviewed 302 tariff proposals. Of this total, 24 proposals were protested by 226 interested parties. Three proposals were suspended; six were permitted to become effective but investigated; 12 were permitted to become effective without investigation; and three were withdrawn prior to the scheduled effective date. Three petitions for reconsideration of initial decisions by the Board or Commission were denied.¹

The Board also reviewed 270 fuel-related adjustments to rates and charges, filed by the regional motor carrier rate bureaus, in response to fuel costs fluctuations during and immediately after the Persian Gulf Crisis.

The Board also considered 11 general increase proposals of motor common carrier rates and charges filed by regional motor carrier bureaus,² and one general increase proposal in rates and charges applicable to household goods shipments filed by the Household Goods Carriers' Bureau. One petition for discovery of the essential terms of a rail contract was also considered and granted.³

Special permission matters involve applications requesting relief from the Commission's tariff publishing and rail contract filing regulations. During fiscal 1991, the Board considered a total of 67 applications. Of those, 54 were granted; seven were denied; five were withdrawn or returned before being decided, and one prior grant was revoked for failure of applicant to comply with the terms of the initial grant.

¹ I&S Docket No. M-30424, *Classification Ratings On Acids, NMFC, March 30, 1991* (not printed), served June 21, 1991; Docket No. 40482, *Restrictions On Joint-line Shipments Of Plastic Resin, SPT* (not printed), served January 4, 1991; and Suspension Case No. 71533, *Hazardous Material Handling Charge, United Parcel Service, January 1, 1991* (not printed), served April 4, 1991.

² Eastern Central Motor Carriers Association, Inc.; Central States Motor Freight Bureau, Inc.; Middle Atlantic Conference; Midwest Motor Freight Bureau; New England Motor Rate Bureau, Inc.; Niagara Frontier Tariff Bureau, Inc.; Pacific Inland Tariff Bureau, Inc.; Rocky Mountain Motor Tariff Bureau, Inc.; and Southern Motor Carriers Rate Conference, Inc.

³ No. 40485, *Farmers Cooperative Company v. Chicago, Central & Pacific Railroad Company* (not printed), served October 22, 1990.

FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting and reporting, financial analysis, cost analysis, cost development, and auditing. These functions involve the preparation, amendment, and interpretation of prescribed accounting and financial reporting rules; the examination and analysis of accounts and financial statements; the analysis of cost and financial evidence submitted by parties to proceedings before the Commission; and the compilation and publication of transportation statistics and cost studies.

Accounting and Reporting

The Commission reduced the recordkeeping burden for railroads by adopting new accounting standards for minor items of property. Minor property units are not required to be capitalized unless their cost exceeds \$5,000 (the old standard was \$2,000). Also, the Commission adopted a methodology for expediting future minimum rule increases without the need for rulemaking.¹ The methodology annually adjusts the \$5,000 standard base amount for capitalizing asset purchases by the June Producer Price Index for all commodities when an aggregate adjustment is \$500 or more. The revised standard will be published in the Federal Register and be effective on January 1 of the following year.

As part of an ongoing program, the Commission reviewed the reporting burden of railroads by examining prescribed periodic reports. A proposal was issued to eliminate and revise several schedules in the Annual Report Form R-1, and to eliminate the requirement for filing several periodic report forms.²

The Commission further sought to reduce railroad reporting burden by amending the rail classification regulations for Class I, Class II, and Class III railroads. The threshold for Class I status would be raised from \$50 million (1978 dollars) to \$250 million (1991 dollars); Class II from \$10-\$50 million to \$20-\$250 million; and, Class III from \$10 million or less to \$20 million or less. The effect of this change would be to subject only the largest railroads to Commission reporting.³ The proposal was pending at the close of the fiscal year.

The Commission denied a carrier's request to reopen a denial of a petition for reinstatement of exemption from accounting and reporting requirements.⁴ The Commission found that the petitioner did not cite nor meaningfully address the applicable criteria for disposition of a petition for stay. The Commission also found that in all respects the petition essentially reiterated arguments made in its prior petition considered by the Commission.

The Commission also conducted a survey of non-reporting motor carriers of property and passengers. The purpose of the survey was to identify those carriers that have increased their annual operating revenues to levels that would require them to file annual and quarterly financial reports with the Commission. The Commission sent survey forms to nearly 44,000 non-reporting motor carriers of property and to over 4,000 non-reporting motor carriers of passengers. Survey forms from 16,933 motor carriers of property and 1,483 motor carriers of passengers were returned, entered into an automated database, and were being analyzed at the close of the fiscal year.

¹ *Revision to Minimum Rule for Railroads' Property Units*, 7 I.C.C.2d 78 (1990).

² Docket No. 40436, *Revision to Railroads' Reporting Requirements* (not printed), served May 21, 1991.

³ Ex Parte No. 492, *Montana Rail Link, Inc. and Wisconsin Central Ltd., Joint Petition For Rulemaking with Respect to 49 CFR 1201* (not printed), served September, 10, 1991.

⁴ Docket No. 40489, *Schneider National, Inc. (SN)—Petition for Reinstatement of Exemption* (not printed), served November 2, 1990.

Cost and Financial Analysis

The Commission analyzed voluminous cost and financial evidence submitted in a consolidated proceeding considering maximum reasonableness of rates on coal moving in the Midwest.⁵ This case entailed a coal user's request for reparations of approximately \$49.6 million.

The Commission also considered evidence in two non-coal proceedings involving bulk commodities. In the first proceeding, rates on movements of wheat and barley from Montana to Pacific Northwest ports were at issue. The Commission's decision granted reparations of slightly less than \$10 million plus interest for the period 1978-1986. At the close of the fiscal year, however, the Commission was considering issues regarding the determination of maximum reasonable rates for years subsequent to 1986.⁶ In the second proceeding, the Commission is considering evidence on the amount of damages and interest with respect to reparations for movements of spent nuclear fuel and related items.⁷

In addition, the Commission analyzed cost and financial evidence submitted in connection with railroad applications to abandon selected line segments. Data for approximately 30 of these proceedings were analyzed to determine the avoidable loss or gain which would result from each abandonment.

The Commission considered cost and revenue evidence introduced by

certain railroads and two shipping entities on the reasonableness of rates charged for the transportation of non-ferrous recyclable commodities. On the basis of initial complaint evidence in a proceeding involving the transportation of nearly 1,800 carloads of automobile shredder residue, an Administrative Law Judge awarded Huron Valley Steel Company approximately \$370,000 in damages plus interest.⁸ At the close of fiscal year 1991, appeals of the decision were being considered by the Commission. In another recyclables proceeding, the Commission analyzed data introduced in a second appeal of a decision involving shipments of aluminum scrap or aluminum residues. The decision on the second appeal granted the shipper damages amounting to slightly over \$28,000 plus interest.⁹

The Commission determined that two Class I railroads, Burlington Northern Railway Company and Norfolk Southern Corporation, were revenue adequate for 1989.¹⁰ Later in the fiscal year, the Commission found one Class I railroad, Illinois Central Railroad Company, to be revenue adequate for 1990.¹¹ Additionally, the Commission determined that the railroad industry's composite cost of capital rate was 11.8 percent for the year 1990.¹²

The Commission analyzed the financial data which were included in applications filed by motor carriers of

⁵ Docket No. 37063, *Increased Rates on Coal, L&N RR—October 31, 1978 and Docket No. 38025S, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company* (proceeding pending).

⁶ Docket No. 37809, *McCarty Farms, et al. v. Burlington Northern Inc.* (not printed), served March 27, 1991. The supplemental decision was served November 26, 1991.

⁷ Docket No. 37076, *U.S. Department of Energy and U.S. Department of Defense v. Baltimore and Ohio R.Co., et al.*, (not printed), served November 30, 1990.

⁸ Docket No. 40385, *Huron Valley Steel Company v. CSX Transportation, Inc. et al.* (not printed), served April 9, 1991.

⁹ Docket No. 39639 *Vulcan Materials Company v. Alton and Southern Railway Company* and Docket No. 39812, *Vulcan Materials v. Alton and Southern Railway Company* (not printed), served December 26, 1990 (consolidated proceeding).

¹⁰ *Railroad Revenue Adequacy—1989 Determination*, 7 I.C.C.2d 158 (1990).

¹¹ *Railroad Revenue Adequacy—1990 Determination*, 8 I.C.C. 2d 1 (1991).

¹² *Railroad Cost of Capital—1990*, 7 I.C.C.2d 620 (1991).

property and passengers requesting approval to be self-insured for bodily injury and property damage claims and/or cargo claims. In performing these analyses, the Commission evaluated whether each applicant had the financial resources to fund its proposed self-insurance program and whether approval of a self-insurance plan, if warranted, should include conditions or restrictions to ensure the availability of sufficient resources to pay claims for statutory minimum coverage levels.

The Commission continued to evaluate the financial condition of large transportation companies in order to determine if they were financially able to provide service. This included a comprehensive monitoring of Greyhound Lines, Inc., the nation's only transcontinental motor carrier of passengers, which has been operating under Chapter XI bankruptcy since June 4, 1990.

Reports were publicly released each quarter, which disclosed the latest revenues, earnings, and traffic volume data of Class I railroads, 100 of the Nation's largest trucking companies, 15 of the largest household goods carriers, and 10 of the largest bus companies.

Cost Development

The Commission received comments for the first review of the Uniform Railroad Costing System (URCS);¹³ this is a long-term research project to further improve and refine URCS. Comments were requested on the economic and statistical issues which underlie the URCS variability factors.

The Commission established revenue-to-variable cost ratio caps for the transportation of recyclable commodi-

ties moving during 1989¹⁴ and 1990.¹⁵ The Commission also requested comments on proposed revisions to its current rules and regulations for monitoring compliance of recyclables rates with the statutory rate cap and will render a final decision prior to the initiation of the first annual compliance proceeding.¹⁶ The Commission issued four quarterly Rail Cost Adjustment Factor (RCAF) decisions as part of its general increase procedures.¹⁷

The Commission requested comments on a proposal to add 1989 data to the trend used to adjust the RCAF for productivity.¹⁸ Also, during the fiscal year, additional comments on proposals designed to "fine tune" the productivity adjustment were requested.¹⁹ A decision was issued approving a data reporting form and a set of guidelines for collecting data used to calculate the fuel component of the index underlying the quarterly RCAF.²⁰

Auditing

Each Class I railroad is required to submit a report from an independent accountant stating that specified data in the Railroad's Annual Report Form R-1

¹⁴ Ex Parte No. 394 (Sub-No. 6), *Cost Ratio for Recyclables—1989 Determination* (not printed), served January 3, 1991, revised August 21, 1991.

¹⁵ Ex Parte No. 394 (Sub-No. 7), *Cost Ratio for Recyclables—1990 Determination* (not printed), served January 3, 1991, revised August 21, 1991.

¹⁶ Ex Parte No. 394 (Sub-No. 3), *Cost Ratio for Recyclables—Compliance Procedures* (not printed), served January 3, 1991.

¹⁷ Ex Parte No. 290 (Sub-No. 5), *Quarterly Rail Cost Adjustment Factor* (not printed), served September 20, 1990 (90-4), December 21, 1990 (91-1), March 20, 1991 (91-2), and June 19, 1991 (91-3).

¹⁸ Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment* (not printed), served August 5, 1991.

¹⁹ Ex Parte No. 290 (Sub-No. 7), *Productivity Adjustment—Implementation* (not printed), served February 15, 1991.

²⁰ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served January 15, 1991.

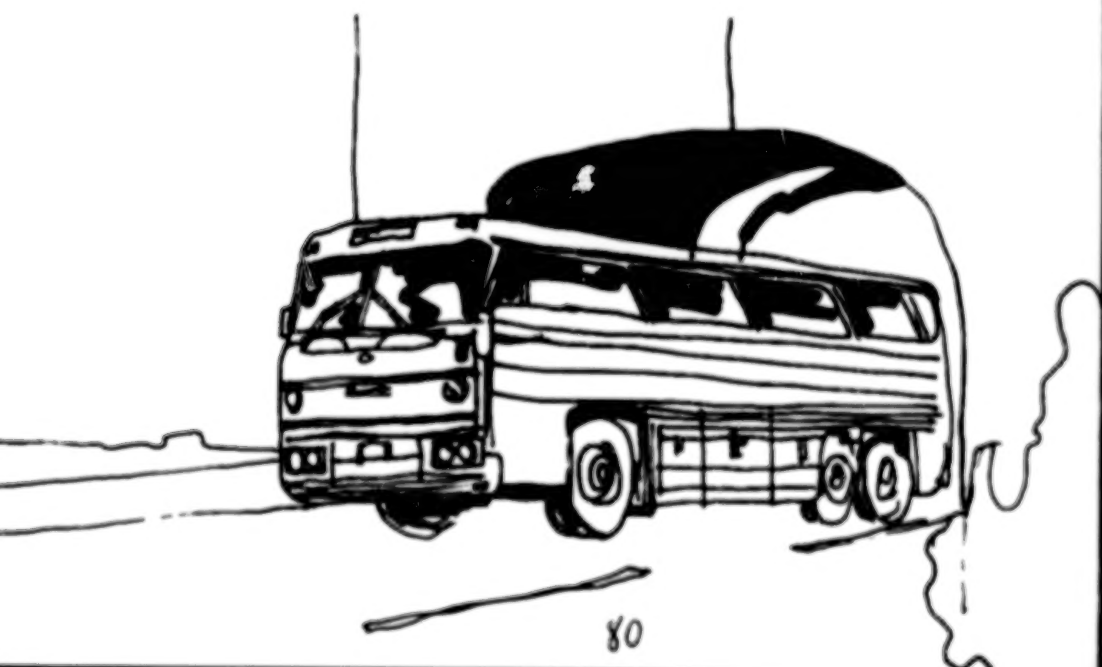
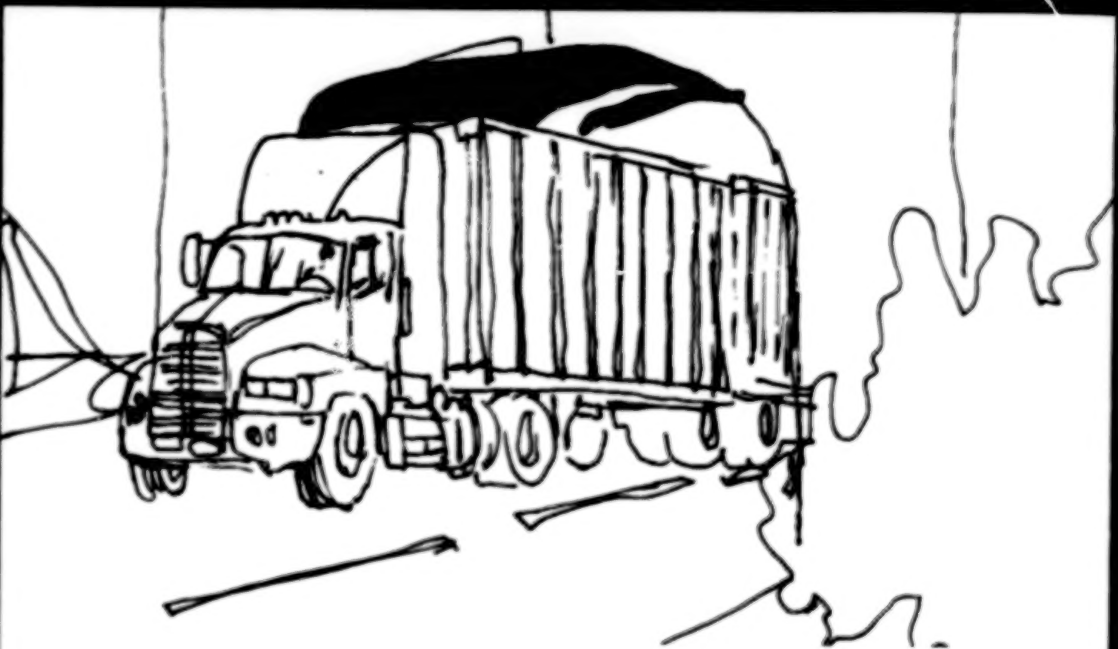
¹³ Ex Parte No. 431 (Sub-No. 2), *Review Of The General Purpose Costing System* (not printed), served September 25, 1990.

have been examined using agreed-upon procedures, and have been found to be in compliance with the Uniform System of Accounts for Railroad Companies. The accountant's report must present any material exceptions which may have come to the accountant's attention during the examination. The Commission

reviewed the working papers of independent accountants for each Class I railroad to determine compliance.

Commission auditors also investigated transactions between and among railroads and their affiliated companies to determine the impact of such transactions on the railroads' financial condition.

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ENFORCEMENT

The Commission continued to direct its enforcement efforts to coincide with the trend toward reliance on marketplace solutions, rather than regulatory interventions. The Commission's enforcement activities were concentrated therefore in those areas in which competition appeared to have been lessened, or where assistance was necessary to aid parties lacking the resources and leverage needed to independently achieve compliance with the Interstate Commerce Act and the Commission's regulations. The Commission placed particular enforcement emphasis on issues involving motor carrier safety and financial responsibility. The following discussion of the Commission's enforcement program groups pertinent cases under five violation categories: (1) the Commission's household goods regulations; (2) small business protection, including tariff compliance matters; (3) unauthorized transportation by Mexican-owned or controlled motor carriers; (4) fraudulent activity; and (5) unsafe and uninsured operations. The Commission sought and obtained a large number of consent agreements and court-approved injunctions to insure future compliance with provisions of both the Interstate Commerce Act and the ICC's regulations, and a total of \$276,613 was collected in penalties. \$338,250 was collected in the previous fiscal year.

Household Goods Regulations

The Commission has taken formal enforcement action to protect individual shippers and to ensure that household goods companies abide by applicable regulations.

In a case involving consumer complaints that the moving company made demands for additional payments beyond the agreed price, and lost their household goods, an injunction was obtained against William David Baron, doing business as Wm. Baron Transportation Lines, Inc., 7-day Hero, and B&D Transportation

Lines, Inc.,¹ of Palm Springs, California. The injunction ordered Mr. Baron to refrain from conducting interstate household goods operations without first obtaining a license or permit and without filing evidence of required levels of insurance with the Commission.

An injunction was obtained against Porfirio Gonzalez, doing business as Nationwide Movers of Houston, Inc., of Houston, Texas, from further uninsured and unlicensed operations, from violating Commission regulations governing the processing and disposition of loss-and-damage claims, the weighing and handling of household goods shipments, and from providing transportation unless there is a tariff containing the rate or such transportation on file with the Commission.²

Fogarty Van Lines, Inc., of Tampa, Florida, signed an agreement to discontinue the practice of denying loss and/or damage claims without further investigation if the claimant does not notify Fogarty of all damage and loss within ten days from date of delivery.³ Fogarty also agreed to investigate and process all loss or damage claims filed in 1989 and 1990 which were denied on the basis of the 10-day notification requirement. In addition, Fogarty agreed to retain properly completed weight tickets as part of its files on non-binding estimate shipments.

In another case, M.P. Santini, Inc., of Lindenhurst, New York, signed an agreement of settlement in which it agreed to comply with the loss and damage claims regulations.⁴ Specifically,

¹ *Interstate Commerce Commission v. Baron and Duncan Transportation Lines, Inc., et al.*, No. CV-90-1213-5 VW (JRx) (C.D. CA, December 6, 1990).

² *Interstate Commerce Commission v. Nationwide Movers of Houston, Inc., Ben Saliz, and Porfirio Gonzalez*, No. CV HO 90-3029 (S.D. TX, January 28, 1991).

³ *Agreement of Settlement* (December 17, 1990).

⁴ *Agreement of Settlement* (May 26, 1991).

Santini has agreed to maintain claims files, and process claims in accordance with Commission regulations, and resolve all pending claims in violation of the regulations by November 30, 1991.

In a case involving transportation related to household goods, Big Shot Express, Inc., and James B. Box of Deltona, Florida, were found in contempt of a court order requiring delivery of approximately 90 private automobiles accepted for interstate shipment and the refunding of approximately \$138,000 in transportation charges to shippers.⁵ In addition to taking action against the carrier, the Commission obtained injunctions against Hubie Ray and Hubie Ray Towing Service Corp., and BWI Managers, Inc. and Richard Snyder, who were refusing to release the automobiles delivered to them by Mr. Box unless the owners paid storage charges due.⁶ In both cases, the courts ordered release of the vehicles without additional charges and required the defendants to post bonds to cover potential claims of the owners of the vehicles. Subsequently, Hubie Ray and Hubie Ray Towing Service were found in contempt of court for violating the injunction and were ordered to immediately post the required \$5,000 surety bond; to reimburse the Commission for costs incurred in obtaining the release of cars unlawfully held by the defendants; and to pay a fine of \$100 per day for any further violations of the court order.⁷

Small Business Protection

Included within this program are cases involving violations of duplicate payment, overcharge, and loss and damage regulations; and violations of leasing regulations designed to prevent owner operator abuses.

The Commission obtained an injunction against Charles C. Towne & Sons, Inc. of Methuen, Massachusetts.⁸ The injunction requires compliance with the regulations governing the disposition of unidentified payments, overcharges, duplicate payments and over collections and with the principles and practices for the investigation and voluntary disposition of loss and damage claims. In addition, the order requires the carrier to review all of its outstanding duplicate payments, overcharges, over collections and unidentified payments for the years 1987 through April, 1991, and to make the necessary and appropriate reimbursements by no later than July 30, 1991. The carrier must also review all of its outstanding and unpaid loss and damage claims for the years 1987 through February, 1991 and make the appropriate settlements by no later than July 30, 1991.

In a case involving owner-operator abuses, an injunction was issued against Commercial Cartage Co. of St. Louis, Missouri.⁹ Commercial Cartage failed to timely return owner-operator funds held in escrow and made other deductions not covered by applicable leases. It was ordered to change immediately its leases to bring them into compliance.

In a case involving tariff enforcement, an injunction was issued against Trencos, Inc., of Williamsport, Pennsylvania, prohibiting Trencos from providing

⁵ *Interstate Commerce Commission v. James B. Box, Big Shot Express, Inc.*, No. 91-87-CIV-ORL-18 (M.D. FL, February 27, 1991, and June 6, 1991).

⁶ *Interstate Commerce Commission v. Hubie Ray and Hubie Ray Towing Service Corp.*, No. CV-90-4416 (HLS) (D. NJ, November 13, 1990); *Interstate Commerce Commission v. BWI Managers, Inc., and Richard E. Snyder*, No. CV 3: 91 CV-00214 (E.D. VA, April 23, 1991).

⁷ *Interstate Commerce Commission v. Absolute Auto Shippers, Inc., Circle B. Trucking, Inc., Hubie Ray Towing Service Corp., and Hubie Ray, individually*, No. CV-90-4416 (D. NJ, February 11, 1991).

⁸ *Interstate Commerce Commission v. Charles C. Towne & Sons, Inc.*, No. 91-10776 (D. MA, May 19, 1991).

⁹ *Interstate Commerce Commission v. Commercial Cartage Corp.*, No. CV-90-1534-C-1 (E.D. MO, January 3, 1991).

transportation subject to Commission jurisdiction unless it charges and collects the rate specified in a tariff on file with the Commission or enters into a written contract as a contract carrier.¹⁰

In a similar case, Preferred Development Corporation, doing business as E&R Trucking, Inc., of Kingston, Pennsylvania, was enjoined from providing transportation without charging and collecting the rates specified in its tariffs.¹¹

Unauthorized Transportation by Mexican Owned or Controlled Motor Carriers

A statutory moratorium currently bars the Commission from granting operating authority to Mexican carriers.¹² Foreign carriers domiciled in Mexico or owned or controlled by Mexicans cannot operate beyond United States border zones contiguous with Mexico. Special certificates of registration must be obtained to provide this transportation.¹³

During this fiscal year, the Commission enforced the restrictions placed upon Mexican motor carriers by obtaining 18 injunctions to halt unauthorized, and uninsured passenger transportation by Mexican carriers between points in Mexico and Texas.

The Commission obtained an injunction against Hidro Gas Juarez, S.A. ordering the Mexican private carrier not to operate into the United States beyond the border commercial zones.¹⁴ In addition, the carrier paid a \$7,500 civil penalty for engaging in unauthorized transportation beyond the scope of its

certificate of registration for operations in the United States.¹⁵

Fraudulent Activity

Included within this category are cases involving racketeering, insurance scams, bribery, weight bumping, and cases involving violations of ethical standards governing the conduct of attorneys and practitioners who represent clients before the Commission.

In a case involving insurance fraud, in which the Commission provided investigative, technical, and legal support, a jury found defendants Robin O. Brown, Judy A. Carter, Johnnie D. Carter, Paul Wayne Collier, James H. Lynch, Thomas Edwin Cook, Sr., and Byron L. Kielmeyer guilty of numerous counts of conspiracy to conduct a pattern of racketeering activity as an enterprise, participating in the conspiracy (except for defendant Kielmeyer), mail fraud, wire fraud, and interstate transportation of stolen property.¹⁶ With the exception of four mail and wire fraud counts against defendant Brown and one mail fraud count against defendant Johnnie Carter, all of the defendants were found guilty of all of the counts charged against them. Defendant James Beck pled guilty to the conspiracy count and defendant James A. Huthison pled guilty to one count of wire fraud, prior to the commencement of the trial. Beck was subsequently sentenced to six years in prison. The other defendants, with the exception of Kielmeyer, received prison terms ranging between 18 months and 3 years, 6 months. Kielmeyer's sentence was suspended and he was placed on 2 years probation. This case involved a scheme by Transportation Services, Inc., to sell truckers cut-rate insurance by issuing sham leases to the

¹⁰ *Interstate Commerce Commission v. Trecco, Inc.*, CV No. 4: CV-90-1571 (M.D. PA, October 22, 1990).

¹¹ *Interstate Commerce Commission v. Preferred Development Corporation, d/b/a E&R Trucking, Inc.*, CV-No. 4: CV-90-1570 (M.D. PA, November 11, 1990).

¹² 49 U.S.C. § 10922(f)(1)

¹³ 13 49 U.S.C. § 10530.

¹⁴ *Interstate Commerce Commission v. Hidro Gas Juarez*, SA Civ. No. 910914 E (S.D. CA, June 2, 1991).

¹⁵ Agreement of Settlement (July 5, 1991).

¹⁶ *United States v. James Beck, d/b/a Transportation Services, Inc., et al.*, CR No. 80-93065-07/RV (N.D. FL, February 22, 1991).

truckers and under-reporting the number of trucks covered under such lease arrangements in obtaining policies under a state assigned risk plan.

In a case involving fraud upon a motor carrier, George Ross McGregor plead guilty to one count of wire fraud and two counts of mail fraud in connection with a scheme to defraud Roadway Express, Inc., Comdata Network, Inc., and Fleet Control Services, Inc.¹⁷ While employed as an agent by Roadway's Special Commodities Division at Columbus, Ohio, in December 1983, McGregor received advances of over \$17,000 for freight which was never transported on behalf of Roadway and for which McGregor prepared fictitious bills of lading and trip leases to give the appearance that the transportation had actually occurred. McGregor defrauded Comdata of over \$15,000, and Fleet Control Services of over \$27,000, by procuring funds through a phony letter of credit issued by a fictitious bank. Based on evidence developed by Commission investigators, McGregor was indicted in May 1987, but fled the jurisdiction to avoid prosecution. He turned himself in in early 1991, and the case was being processed at the end of the fiscal year.

In yet another case involving fraud on a motor carrier, Terrance Kirkman, the sole owner of Boise School Bus Co. of Boise, Idaho, was convicted of misappropriation of funds from the carrier as a result of evidence developed by Commission investigators.¹⁸ At sentencing, the Government contended that Kirkman had embezzled \$736,000 from the company and left the carrier without the financial resources to safely maintain its vehicles. Kirkman was sen-

tenced to four years in prison, 300 hours community service, and 5 years probation. In addition, on related tax evasion counts, Kirkman was ordered to pay \$103,000 in back taxes. A former manager of the company, Ronald B. Johnson, was also convicted.

In a case involving qualifications to represent others before the Commission, a practitioner's petition for reinstatement was denied because he continued to engage in agency practice during the term of his suspension.¹⁹ The Commission ordered the practitioner reprimanded and suspended him for an additional two years.

In another case, the Commission disbarred an attorney based upon orders of disbarment issued in Louisiana and Mississippi and the individual's failure to respond to a show cause order issued by this agency.²⁰

Unsafe or Uninsured Operations

The Commission's insurance compliance program emphasizes the use of consent agreements to cure insurance deficiencies. The Commission's regulations specify minimum insurance levels for various types of carriers and, when coverage expires or is canceled, the Commission's field staff conducts an investigation. Where violations are found, the Commission then seeks voluntary compliance through consent agreements by which involved carriers agree not to operate until they have obtained appropriate insurance coverage.

During fiscal year 1991, the Commission obtained 1,619 consent agreements in insurance cases. As appropriate, the Commission takes stronger enforcement action for lack of insurance where carriers fail or refuse to ob-

¹⁷ *United States of America v. George Ross McGregor*, No. CR-2-87-073 (S.D. OH, May 31, 1991).

¹⁸ *United States of America v. Terrance Kirkman and Ronald B. Johnson*, Crim. No. 90-022-S-HLR (D. IL, March 1, 1991).

¹⁹ Ex Parte No. 470 (Sub-No. 1), *Matter of William Sheridan* (not printed), served August 23, 1991.

²⁰ Ex Parte No. 493, *Matter of David H. Massey* (not printed), served April 30, 1991.

tain prescribed insurance. Overall, there were 29 injunctions obtained against carriers during the fiscal year for lack of adequate insurance.

The Commission conducts follow-up investigations to ensure that these carriers are complying with consent agreements and injunctions and that they are conducting interstate operations with appropriate levels of insurance. Carriers that continue to operate without appropriate insurance are subject to appropriate remedial action, including contempt actions.

The Commission obtained a civil contempt order against Melvin Bruce of Springfield, Missouri, for violating an injunction prohibiting him from transporting passengers without holding authority and filing proof of insurance with the Commission.²¹ Mr. Bruce failed to pay \$7,602.50 to purge himself of contempt as ordered by the court and was remanded to jail for 5 days.

The Commission takes particularly aggressive actions against carriers with poor safety records that operate without insurance. In a civil forfeiture action filed against Alky Enterprises, Inc., of

New Hampshire, a judgment of \$51,500 plus costs was obtained based upon unauthorized and uninsured transportation performed after the Commission denied the carrier's application for permanent authority due to an "unsatisfactory" safety rating issued by the Department of Transportation.²²

In another case involving a carrier operating with an "unsatisfactory" safety rating, the Commission obtained an injunction prohibiting Falcon Motorcoach and Kenneth Arnold of Chicago, Illinois, from transporting passengers without public liability insurance in effect and on file with the Commission and without authority issued by the Commission in effect.²³

In another case involving a carrier operating with an "unsatisfactory" safety rating, Gerardo & Son Motor Service, Inc., of Rosemont, Illinois, was enjoined from transporting property without insurance in effect and on file with the Commission and without appropriate Commission authority in effect.²⁴ This carrier was found to be transporting, among other commodities, hazardous materials.

²¹ *Interstate Commerce Commission v. Melvin Bruce*, CV No. 83-3381-CV-S-4 (W.D. MO, December 7, 1990).

²² *United States of America v. Alky Enterprises*, CV No. 90-498 (D. NH, August 16, 1991).

²³ *Interstate Commerce Commission v. Falcon Motorcoach and Kenneth Arnold*, Civ. No. 90-C-5788 (N.D. IL, November 15, 1990).

²⁴ *Interstate Commerce Commission v. Gerardo & Son Motor Service, Inc.*, Civ. No. 91-C4332 (N.D. IL, August 16, 1991).

COURT ACTIONS

In fiscal year 1991, the Commission had a continued high success rate in litigation, with the courts upholding almost all of the Commission decisions that were reviewed. There were 320 cases pending at the beginning of the fiscal year, and an additional 60 cases were filed during the year. As of September 30, 1990, the courts had decided 63 cases, leaving 317 cases pending at the end of the year. Of the concluded cases, one was decided by the Supreme Court,⁵ by various federal courts of appeals, and the remaining seven by federal district courts.

Railroad Issues

Rail Labor. A high percentage of court cases again involved the rights and remedies of rail labor, culminating with the Supreme Court's landmark decision that 49 U.S.C. 11341(a) extends to overriding provisions of collective bargaining agreements (CBAs) that would impede implementation of Commission-approved consolidations under section 11343.¹ The Court held that section 11341(a)'s exemptive language is "clear, broad, and unqualified," manifesting an unambiguous Congressional intent that the consummation of these transactions not be frustrated by "any obstacle imposed by law," including labor contracts.² This reversed a contrary holding of the D.C. Circuit,³ but the Supreme

Court left certain issues open. On September 17, 1991, the D.C. Circuit remanded the cases to the Commission for further consideration of those issues.⁴

In another significant case addressing appropriate labor protection where rail lines are sold from one railroad to another railroad, the Sixth Circuit affirmed a Commission decision that: (1) the seller's employees could not carry their CBAs to the buyer if they accepted employment with the buyer; (2) the buyer need not hire the seller's employees on a preferential basis; and (3) the buyer has no obligation to negotiate with the seller's employees.⁵ Unlike mergers, line sales do not result in consolidation of functions or control. Accordingly, the Commission determined that it would be inappropriate to require an "umbrella" implementing agreement—one negotiated among the buyer, the seller, and all of the affected employees of both—to determine the selection and assignment of forces.⁶

In affirming two Commission decisions involving review of arbitral awards growing out of the labor conditions imposed upon Atlantic Richfield Company's acquisition of control of the Butte Anaconda and Pacific Railway,⁷ the Ninth Circuit also confirmed the Commission's power to review arbitral awards.⁸ The court agreed that the

¹ *Norfolk and W. Ry. v. American Train Dispatchers*, 111 S.Ct. 1156 (1991) (*Train Dispatchers*).

² *Ibid.*, at 1163, 1166.

³ *Brotherhood of Ry. v. Carmen v. ICC*, 880 F.2d 562 (D.C. Cir. 1989) (*Carmen*). That decision had reversed two earlier Commission decisions affirming awards of arbitration committees acting pursuant to labor protective conditions previously imposed by the Commission. The committees had set terms for implementing the post-merger consolidation of repair shops in one case, and locomotive dispatching in the other, and in doing so, modified certain terms of existing CBAs to permit implementation. *CSX Corp.-Control-Chessie System, Inc. and Seaboard Coast Line Indus.*, 4 I.C.C.2d 641 (1988); *Norfolk S. Corp.-Control-Norfolk & W. Ry. & Southern Ry.*, 4 I.C.C.2d 1080 (1988).

⁴ *Train Dispatchers* did not dispose of certain issues and raised others: (1) the extent that the "as necessary" statutory language limits the scope of section 11341(a) immunity; and (2) the extent that the Commission must account for and accommodate the interests of employees in approving a transaction.

⁵ *Railway Labor Exec. Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991), *aff'g* *Wilmington Tr. RR, Inc.-Pur. & Lease-CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990).

⁶ The Commission thus overruled a prior decision in *Brandywine Valley R.R.-Pur.-CSX Transp.*, 5 I.C.C.2d 764 (1989).

⁷ *Employees of Butte Anac. & Pac. v. United States*, 938 F.2d 1009 (9th Cir. 1991), *reh'g denied* (August 21, 1991), *aff'g* *Atl. Rich.-Control-Butte, Anac. & Pac. Ry.*, 5 I.C.C.2d 934 (1989).

⁸ *International Bhd. of Elec. Workers v. ICC*, 862 F.2d 330 (D.C. Cir. 1988), *aff'g* *Chicago & N.W. Transp. Co.*, 3 I.C.C.2d 729 (1987).

scope of an arbitrator's authority is defined by the labor conditions imposed by the Commission and that exceeding that scope is sufficient grounds to review and vacate an award.⁹

The extent of rail labor's standing to challenge Commission actions continued to be defined. The Supreme Court declined to review a Seventh Circuit decision holding that, while labor may challenge a Commission decision not to impose labor protection or the adequacy of any protection afforded, it lacks standing to challenge the merits of the underlying transaction where shippers or other affected parties have not done so.¹⁰ Similarly, the D.C. Circuit held that a union that failed to show that its members would be injured by an acquisition of trackage rights had no standing to challenge a Commission decision exempting that acquisition from regulation.¹¹ The Eighth Circuit found that labor could challenge the Commission exemption of leveraged securities issuances to finance the acquisition of the Chicago & North Western Transportation Company, on the ground that it could threaten the future viability of CNW to the detriment of rail employees.¹² The court affirmed the Commission's decision on the merits.

Because labor protection is discretionary (and typically not imposed)

when active rail lines are acquired by noncarriers under 49 U.S.C. 10901,¹³ but mandatory when purchased by rail carriers under 49 U.S.C. 11343, labor has often unsuccessfully argued that the noncarrier subsidiaries created by rail carrier-parents to acquire such lines should be viewed as the parents' "alter egos".¹⁴ The Supreme Court this year declined to review a D.C. Circuit decision finding a noncarrier sufficiently independent from its rail parent for its rail acquisition to be processed under section 10901 rather than section 11343.¹⁵

In the face of arguably conflicting decisions from two other circuits,¹⁶ the Tenth Circuit upheld a Commission construction of section 11347 as compelling labor protection only for those directly employed by a rail carrier, not employees of motor carrier subsidiaries of consolidating railroads.¹⁷ Lastly, in the Western District of Washington, the District Court upheld a Commission decision declining to extend labor protection benefits extraterritorially to a Cana-

¹³ In section 10901 transactions, labor protection is granted only in "exceptional circumstances" so that new railroads will not be discouraged from buying and continuing rail service over lines that might otherwise be abandoned. *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 815 (1985), *aff'd sub nom. Illinois Commerce Comm'n v. ICC*, 817 F.2d 145 (D.C. Cir. 1987).

¹⁴ *Railway Labor Exec. Ass'n v. ICC*, 819 F.2d 1172 (D.C. Cir. 1987); *Railway Labor Exec. Ass'n v. United States*, 791 F.2d 994 (2d Cir. 1986); *Brotherhood of Locomotive Eng'rs v. ICC*, 909 F.2d 909 (6th Cir. 1990).

¹⁵ *Railway Labor Exec. Ass'n v. ICC*, 914 F.2d 273 (D.C. Cir. 1990), *cert. denied*, 111 S.Ct. 1581 (1991), *aff'g* Finance Docket No. 31205, *FRVR Corp.—Acq. & Oper. Exempt.—Chicago & N.W. Transp. Co.* (not printed), served February 28, 1989; Finance Docket No. 30779, *Rochester & S.R.R. & Genesee & Wy. Indus.* (not printed), served June 27, 1986.

¹⁶ *Cosby v. ICC*, 741 F.2d 1077 (8th Cir. 1984), *cert. denied*, 471 U.S. 1110 (1985) (labor protection afforded); *Kansas City S. Indus. v. ICC*, 902 F.2d 423 (5th Cir. 1990) (labor protection not afforded).

¹⁷ *Rives v. ICC*, 934 F.2d 1171 (10th Cir. 1991).

⁹ 938 F.2d at 1014.

¹⁰ *Simmons v. ICC*, 900 F.2d 1018, *reh'g denied*, 909 F.2d 186 (7th Cir. 1990), *cert. denied* 111 S.Ct. 1104 (1991). See also, *Simmons v. ICC*, 900 F.2d 1023 (7th Cir. 1990); *United Transp. Union v. ICC*, 891 F.2d 908 (D.C. Cir. 1989), *cert. denied*, 110 S.Ct. 3271 (1990).

¹¹ *Simmons v. ICC*, No. 90-1498 (D.C. Cir. May 30, 1991), *per curiam*. The court also found that a community that is not located directly on a line over which the Commission allowed the trackage rights also lacked standing to contest the Commission's decision because it would not be affected by that acquisition.

¹² *Brotherhood of Ry. Carmen v. ICC*, 917 F.2d 1136 (8th Cir. 1990), *aff'g Blackstone Cap. Partners-Cont. Exempt.-CNW Corp.*, 5 I.C.C.2d 1015 (1989).

dian citizen employed by the Burlington Northern in BN's Toronto office.¹⁸

Rail Exemptions. The courts affirmed two important Commission decisions concerning the agency's rail exemption authority at 49 U.S.C. 10505. In a case of first impression, the D.C. Circuit held that the Commission need only consider those elements of the rail transportation policy (RTP) related to the underlying statutory provision from which exemption is sought; otherwise "the exemption process would [be] broader and possibly more onerous than [an otherwise applicable regulatory] proceeding."¹⁹

The D.C. Circuit also affirmed the Commission's decision to exempt the independent motor portion of trailer-on-flatcar/container-on-flatcar (TOFC/COFC) shipments, finding that the "the [motor] pickup and delivery services at issue are 'related to a rail carrier providing transportation' within the meaning of section 10505(a)," even though the service is not directly provided by a railroad.²⁰

Other Issues

Motor. The Third Circuit affirmed a district court decision upholding a Commission finding that a loss-of-discount provision in a motor carrier's rate tariff was unlawful because at the time the

shipments in question moved (1984-85) the agency's credit regulations did not authorize such provisions.²¹

While the Supreme Court's 1990 *Maislin*²² decision upheld the requirements of the filed rate doctrine, the courts this year continue to address issues remaining in its wake. In one case, the Sixth Circuit reversed an unreasonable practice finding premised on the *Maislin*-rejected negotiated rates policy,²³ but remanded the matter to the Commission, as suggested by *Maislin*, for a determination of rate reasonableness of the higher filed rate.²⁴ Two District Court cases were similarly remanded.²⁵ In another matter, a District Court reversed that portion of a decision based on the discredited negotiated rates policy, but affirmed the Commission's ultimate finding that collection of undercharges would be an unreasonable practice where the tariffs relied upon were ambiguous.²⁶

¹⁸ *Delta Traffic Serv., Inc. v. Mennen Co.*, No. 90-5063 (3rd Cir. Oct. 16, 1990), *aff'd* 730 F.Supp. 1309 (D.N.J. 1990), *aff'd* Docket No. MC-C-30135, *Mennen Co. v. Campbell 66 Express* (not printed), served August 26, 1989. The Commission had later authorized such provisions as legitimate forms of liquidated damages. *Payments of Rates & Charges—Penalty for Nonpayment*, 4 I.C.C.2d 340, 345 (1988).

¹⁹ *Maislin Industries v. Primary Steel, Inc.*, 110 S.Ct. 2759 (1990).

²⁰ *NITL—Pet. to Inst. Rule on Negotiated Car. Rates*, 31 C.C.2d 99 (1986), *clarified* 51 C.C.2d 623 (1989).

²¹ *Rebel Motor Freight v. ICC*, 933 F.2d 1009 (6th Cir. 1991), *reversing and remanding* No. MC-C-30140, *Sunshine Mills, Inc. v. Rebel Motor Freight* (not printed), served July 31, 1989.

²² *Rebel Motor Freight v. ICC*, No. 86-2973-TU/A (W.D. Tn. July 12, 1991), *remanding* No. MC-C-30015, *Freeman Products, Inc. v. Rebel Motor Freight* (not printed), served September 22, 1988; *Branch Motor Express v. Ampad Corp.* No. 86-0204-F (D. Mass. July 22, 1991), *remanding* No. MC-C-30080, *Ampad Corp.—Petition for Declaratory Order*.

²³ *Rebel Motor Freight v. Diamond-Bathurst, Inc.*, No. 86-2652-4B (W.D. Tn. August 20, 1991), *aff'd* *Anchor Glass Container Corp. v. Rebel Motor Freight* (not printed), served February 3, 1989.

¹⁸ *Van Blaricom v. Burlington N. R.R.*, No. C90-1530WD (W.D. Wash. July 29, 1991), *aff'd* *Great Northern Pac.—Merger—Great Northern Ry. (In the Matter of Paul F. Van Blaricom)*, 6 I.C.C.2d 919 (1990).

¹⁹ *Village of Palestine v. ICC*, 936 F.2d 1335, 1339 (D.C. Cir. 1991), *petition for cert. filed* (Sept. 26, 1991), *aff'd* Finance Docket No. 31472, *Indiana R.R. Co.—Exempt—Illinois Cent. R.R. Co.* (not printed), served August 7, 1990. *Palestine* involved line sales and trackage rights between non-Class I railroads, and competition was the only factor which would have been considered in a section 11344(d) application proceeding; thus, for exemption purposes, the Commission needed only to review the RTP criteria related to competition.

²⁰ *Central States Motor Freight Bureau v. ICC*, 924 F.2d 1099, 1102 (D.C. Cir. 1991), *aff'd* *Improvement of TOFC/COFC Regulations (Pickup and Delivery)*, 6 I.C.C.2d 207 (1989).

Water. The D.C. Circuit, approving of how the Commission determines ferry-boat status, affirmed a Commission decision that a 30-mile water operation between Montauk, New York and Groton, Connecticut, is exempt ferry service under 49 U.S.C. 10544(a)(4).²⁷ The Commission had explained that distance is not determinative, but rather whether the ferry serves as a substitute for a road. The court also agreed that the Commission's decision was not an "agency action" under Federal environmental laws, so that the agency did not have to evaluate the environmental consequences of its decision.²⁸

Pipelines. The D.C. Circuit agreed that the ICC has jurisdiction to regulate the transportation of anhydrous ammonia by pipeline, not the Federal Energy Regulatory Commission (FERC).²⁹

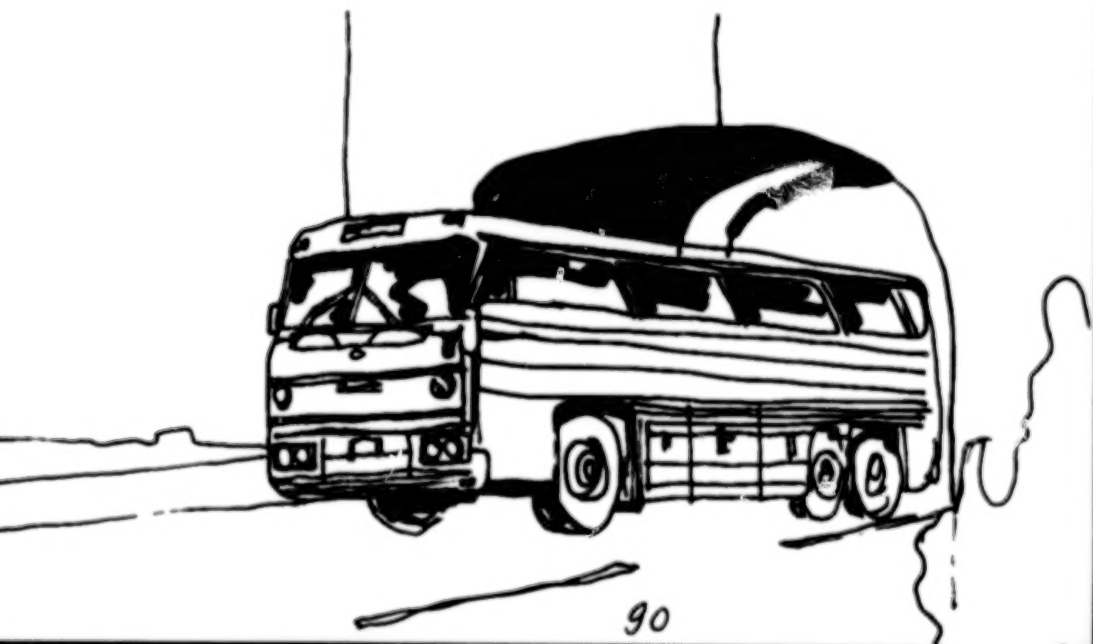
Procedural. On a procedural issue of first impression, the Ninth Circuit upheld the Commission's practice of counting the notation votes of Commissioners who have departed the agency before all votes are tallied and a decision issued, "as a matter of administrative efficiency, practicality, and fairness to the decisional process."³⁰

²⁷ *Cross-Sound Ferry Serv., Inc. v. ICC*, 934 F.2d 327 (D.C. Cir. 1991), *aff'g Viking Starship, Inc.-Common Carrier Application*, 6 I.C.C.2d 228 (1989).

²⁸ 934 F.2d at 334.

²⁹ *CF Indus. v. ICC*, No. 90-1516 (D.C. Cir. June 6, 1991), *aff'g Gulf Cent. Pipeline Co.—Pet. for Decl. Order*, 7 I.C.C.2d 52 (1990). *Accord, CF Indus. v. FERC*, 925 F.2d 476 (D.C. Cir. 1991), *aff'g Gulf Central Pipeline Co.*, 50 FERC § 61,381 (1990).

³⁰ *Idaho v. ICC*, 939 F.2d 784 (9th Cir. 1991), *aff'g Union Pac. R.R.-Aband.-In Fremont and Teton Counties, ID*, 6 I.C.C.2d 641, 644 (1990).



APPENDIX A

COMMISSION ORGANIZATION

The bureau and offices of the Commission are listed below. Heads of each Bureau or Office report to the Chairman via the channels indicated on the organization chart.

OFFICE OF THE CHAIRMAN

Chairman	Edward J. Philbin
Chief of Staff	Jon R. Stover
Counsel to the Chairman	Edward Whitfield
Special Assistant	Sharron Rankine
Management Specialist	Selina V. Gray

OFFICE OF THE VICE CHAIRMAN

Vice Chairman	Edward M. Emmett
Chief of Staff	Robert A. Voltmann
Attorney Advisor	William A. Mullins
Confidential Assistant	Lenore M. Cummings
Secretarial Assistant	Hugh Ann Walls

OFFICE OF COMMISSIONER SIMMONS

Commissioner	J. J. Simmons III
Chief of Staff	Thomas T. Vining
Attorney Advisor	Van A. Bosco
Attorney Advisor	Ricky L. Crawford
Confidential Assistant	Hazel M. Lowe
Secretarial Assistant	Rebecca W. Powell

OFFICE OF COMMISSIONER PHILLIPS

Commissioner	Karen Borlaug Phillips
Chief of Staff	Debra A. Weiner
Attorney Advisor	Samuel E. Eastman
Staff Economist	Janie A. McCutchen
Rotating Attorney	Paul R. Joyce
Executive Assistant	Marie C. Anderson

OFFICE OF COMMISSIONER McDONALD

Commissioner	Gail Clements McDonald
Chief of Staff	Dixie Horton
Attorney Advisor	Beryl Gordon
Attorney Advisor	Amy Northcutt
Confidential Assistant	Vera Dowhan
Secretarial Assistant	Lorelei Ransome

STAFF OFFICIALS

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Director	Bernard Gaillard
Associate Director	William J. Love
Deputy Director, Section of Operations	Vacant
Deputy Director, Section of Enforcement	Charles E. Wagner

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

Assistant to the Chairman and Director	H. Spofford Canfield IV
Deputy Director	Joy C. Belew
Congressional Liaison	Farrell P. McHugh
Confidential Assistant	Kelly O'Brien
Administrative Assistant	Carolyn I. Johnson

OFFICE OF ECONOMICS

Director	Howard K. Face
Assistant to the Director, Administration	Aubrey H. Herndon, Jr.
Assistant to the Director, Policy Review	Leslie J. Selzer
Administrative Officer	Hildred I. Smith
Deputy Director, Economics	Edward E. Guthrie
Acting Deputy Director, Analysis	Leland L. Gardner
Chief, Section of Audit and Accounting	William F. Moss III
Chief, Section of Financial Analysis	Ward L. Ginn
Chief, Section of Rail Costing	William T. Bono
Chief, Section of Rail Services Planning	Michael E. Sullivan
Chief, Section of Energy and Environment	Elaine K. Kaiser
Chief, Section of Research and Analysis	Michael A. Redisch

OFFICE OF EXTERNAL AFFAIRS

Assistant to the Chairman and Director	Peggy M. Venable
External Affairs Assistant	Vacant
Associate Director, Intergovernmental Affairs	Zeda Homoki
Associate Director, Public Affairs	Alvin H. Brown
Associate Director, Public Affairs	A. Dennis Watson

OFFICE OF THE GENERAL COUNSEL

General Counsel	Robert S. Burk
Deputy General Counsel	Henri F. Rush
Senior Associate General Counsel	Ellen D. Hanson
Associate General Counsel	John J. McCarthy
Associate General Counsel	Craig M. Keats

OFFICE OF HEARINGS

Chief Administrative Law Judge	Paul S. Cross
Secretary/Administrative Officer	Alice Durham
Case Control Manager	Linda M. Charles

OFFICE OF HUMAN RELATIONS

Director	Alexander W. Dobbins
EEO Manager	Janice C. Mackey
EEO Assistant/Spanish Speaking Coordinator ..	Lydia A. Wright

OFFICE OF THE INSPECTOR GENERAL

Inspector General	James J. McKay
Assistant Inspector General for Audit.	Robert Merson
Staff Associate	Darlene Proctor

OFFICE OF THE MANAGING DIRECTOR

Managing Director	H. J. Rhodes
Counsel to the Managing Director, Privacy/FOIA Officer	S. Arnold Smith
Information Resource Management.	Kathleen M. King
Chief, Budget and Fiscal Office	Anthony Jacotik, Jr.
Director, Office of Personnel	Richard H. Mcoers
Chief, Section of Administrative Services.	Virgil L. Schultz
Chief, Section of Systems Development	Edward F. Welkener

OFFICE OF PROCEEDINGS

Director	David M. Konschnik
Assistant to the Director	Richard L. Gagnon
Chief Counsel to the Director	Laura D. Cooper
Deputy Director, Motor Section	Richard B. Felder
Deputy Director, Rail Section	Joseph H. Dettmar
Management Analyst	Charles L. Renninger
Administrative Officer	Melinda K. Collins

OFFICE OF PUBLIC ASSISTANCE

Director and Special Counsel	Patricia A. Hahn
Deputy Director and Small Business Assistance Officer.	Dan G. King
Legal Clerk	Verna Annetha Harris

OFFICE OF THE SECRETARY

Secretary	Sidney L. Strickland, Jr.
Assistant Secretary	Vacant
Administrative Officer	Madeline M. Echols
Chief, Legal Unit	Anne K. Quinlan
Chief, Commission Service Section.	Ellen R. Keys
Chief, Public Records Section.	Edward C. Fernandez

BUREAU OF TRAFFIC

Director	Neil S. Llewellyn
Assistant to the Director	James W. Greene
Administrative Officer	Margie S. Yeager
Chief, Section of Tariffs	Charles E. Langyher III
Chief, Section of Rates and Informal Cases ..	Lawrence C. Herzig

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
REGIONAL HEADQUARTERS AND FIELD OFFICES****EASTERN REGION**

Regional Headquarters	Richard M. Biter Regional Director 3535 Market Street Room 16400 Philadelphia, PA 19104
Atlanta	1371 Peachtree Street, N.E. Room 638 Atlanta, GA 30309
Baltimore	1025 Fallon Federal Building Charles Center 31 Hopkins Plaza Baltimore, MD 21201
Boston	Boston Federal Office Building 10 Causeway Street Room 1015 Boston, MA 02222
Charlotte	Room CC-516 Mart Office Building 800 Briar Creek Road Charlotte, NC 28205
Cleveland	Commerce Plaza Room 310 7123 Pearl Road Middleburg Heights, OH 44119
Jacksonville	1851 Executive Center Drive Suite 204 Jacksonville, FL 32207
New York	Jacob K. Javits Federal Building 26 Federal Plaza Room 1807 New York, NY 10278

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
REGIONAL HEADQUARTERS AND FIELD OFFICES.—Continued**

CENTRAL REGION

Regional Headquarters	William Redmond, Jr. Regional Director Xerox Center 55 West Monroe Suite 550 Chicago, IL 60603
Fort Worth	411 West 7th Street Suite 510 Fort Worth, TX 76102
Indianapolis	Federal Building & U.S. Courthouse 46 East Ohio Street Room 429 Indianapolis, IN 46204
Kansas City	2111 Federal Building 911 Walnut Street Kansas City, MO 64105
Minneapolis	Federal Building & U.S. Courthouse 110 South Fourth Street Room 475 Minneapolis, MN 55401
Omaha	Federal Office Building Room 728 106 South 15th Street Omaha, NE 68102
St. Louis	1222 Spruce Street First Floor Room 1.207 St. Louis, MO 63103

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
REGIONAL HEADQUARTERS AND FIELD OFFICES.—Continued**

WESTERN REGION

Regional Headquarters	John H. Kirkemo Regional Director 211 Main Street Suite 500 San Francisco, CA 94105
Denver	Federal Office Building 1961 Stout Street Room 440 Denver, CO 80294
Los Angeles	Suite 304 360 East 2nd Street Los Angeles, CA 90012
Salt Lake City	2414 Federal Building 125 S. State Street Salt Lake City, UT 84138
Seattle	1894 Federal Building 915 Second Avenue Seattle, WA 98174

INTERSTATE COMMERCE COMMISSIONERS **1887-1991**

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1. COOLEY, Thomas M.	Mich.	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	Ill.	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	N.Y.	Dem.	Dec. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	Vt.	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter L.	Ala.	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	Vt.	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	N.Y.	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	Iowa	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	Ga.	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	Iowa	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	Vt.	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	Ill.	Rep.	Mar. 21, 1898	Sept. 30, 1899
13. FIFER, Joseph W.	Ill.	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	Mo.	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	Calif.	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	Iowa	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	Ill.	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	Ky.	Dem.	Dec. 31, 1910	Jan. 1, 1926
19. MEYER, Balthasar H.	Wis.	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	Calif.	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	Colo.	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	N.J.	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	Oreg.	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	Va.	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	Mass.	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	Mass.	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J. ¹	N.J.	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	N.Y.	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	Wis.	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	Wash.	Rep.	May 5, 1921	Jan. 6, 1930
31. LEWIS, Ernest I.	Ind.	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	N.J.	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	N.Y.	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	Ala.	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra Jr.	Okla.	Rep.	Feb. 23, 1927	Dec. 31, 1933
37. PORTER, Claude R.	Iowa	Dem.	Jan. 28, 1928	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934

¹ Recess appointment only, not confirmed.

INTERSTATE COMMERCE COMMISSIONERS **1887-1991.—Continued**

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
39. LEE, William E.	Idaho	Rep.	Jan. 18, 1930	Aug. 18, 1953
40. TATE, Hugh M.	Tenn.	Rep.	Feb. 28, 1930	Sept. 16, 1937
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	Pa.	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M.W.	Tex.	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	Ala.	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	Tenn.	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALLDREDGE, J. Haden	Ala.	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	N.D.	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	S.C.	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	Ind.	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	Iowa	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	Ill.	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	Utah	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	Ind.	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	Conn.	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	Wash.	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	Calif.	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	Ky.	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	Colo.	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, EVERETT	Tex.	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	Ga.	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	Ohio	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	Fla.	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	Pa.	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	Idaho	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	Va.	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	Iowa	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	Ohio	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	Mass.	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	Md.	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	W.Va.	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	Tex.	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	Kans.	Rep.	Apr. 26, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	Calif.	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	Ill.	Rep.	July 31, 1967	Aug. 31, 1977
75. BURKE, Wallace R.	Conn.	Dem.	Aug. 21, 1968	June 28, 1969
76. JACKSON, Donald L.	Calif.	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C.	Md.	Rep.	Dec. 15, 1969	June 18, 1982
78. BREWER, W. Donald	Colo.	Rep.	July 23, 1970	June 30, 1974

**INTERSTATE COMMERCE COMMISSIONERS
1887-1991.—Continued**

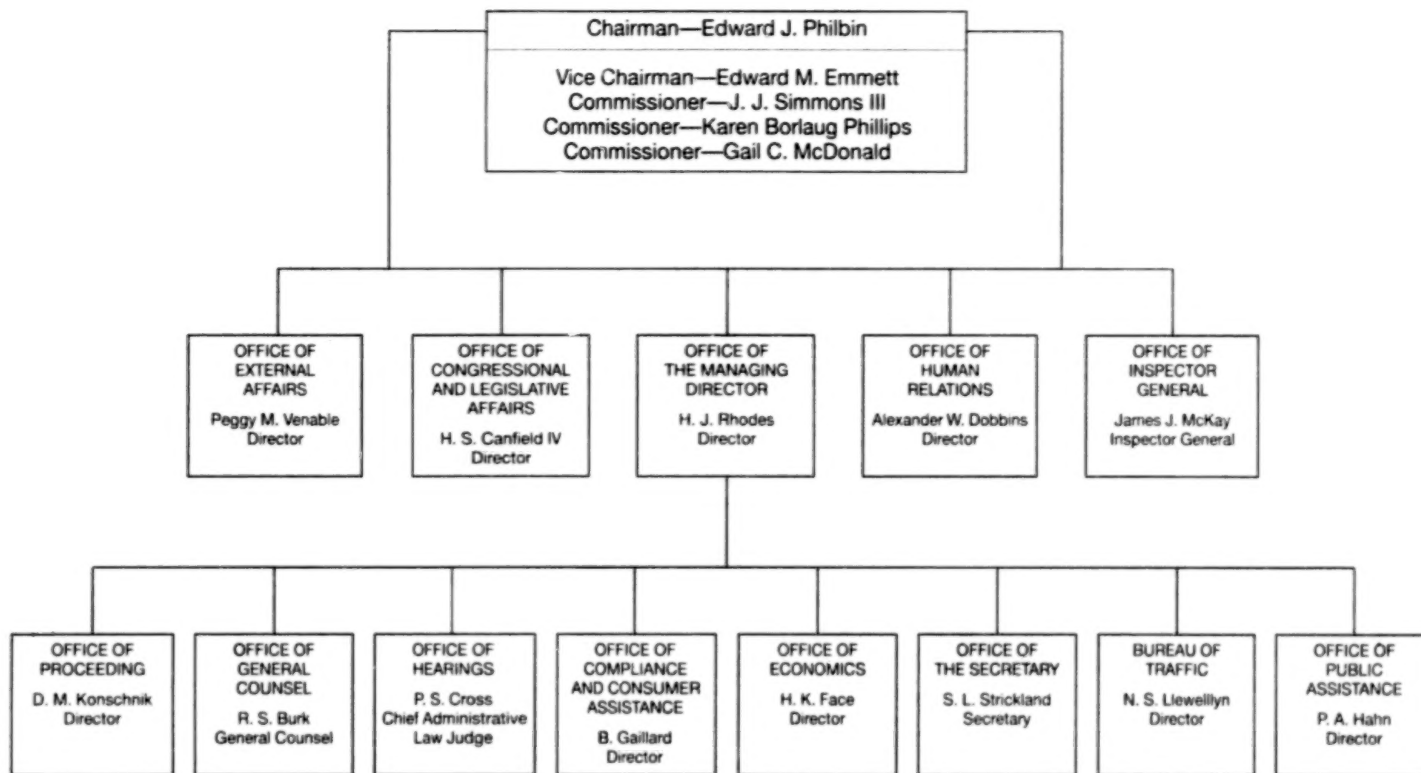
Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
79. WIGGIN, Chester M., Jr.	N.H.	Rep.	Oct. 24, 1972	July 31, 1973
80. McFARLAND, Alfred T.	Tenn.	Ind.	Nov. 1, 1972	Nov. 10, 1977
81. MONTEJANO, Rodolfo ²	Calif.	Dem.	Nov. 3, 1972	Mar. 2, 1973
82. O'NEAL, A. Daniel, Jr.	Wash.	Dem.	Apr. 12, 1973	Dec. 31, 1979
83. CLAPP, Charles L.	Mass.	Rep.	Mar. 14, 1974	Mar. 19, 1982
84. CORBER, Robert J.	Va.	Rep.	Mar. 13, 1975	Dec. 1, 1976
85. CHRISTIAN, Betty Jo	Tex.	Dem.	Apr. 7, 1976	Dec. 31, 1979
86. TRANTUM, Thomas A.	Conn.	Rep.	July 23, 1979	July 31, 1981
87. GASKINS, Darius W.	D.C.	Dem.	July 23, 1979	Feb. 1, 1981
88. ALEXIS, Marcus	Ill.	Dem.	Aug. 27, 1979	June 30, 1981
89. GILLIAM, Reginald E.	Va.	Dem.	Apr. 21, 1980	Feb. 1, 1983
90. TAYLOR, Reese H., Jr.	Nev.	Rep.	June 25, 1981	Dec. 31, 1985
91. STERRETT, Malcolm M.B.	Md.	Rep.	Feb. 12, 1982	Aug. 11, 1988
92. ANDRE, Frederic N.	Ind.	Rep.	Mar. 19, 1982	Nov. 21, 1989
93. SIMMONS, J.J. III ³	Okla.	Dem.	Apr. 27, 1982 Sept. 10, 1984	Feb. 28, 1983
94. GRADISON, Heather J.	Ohio	Rep.	June 18, 1982	Feb. 12, 1990
95. LAMBOLEY, Paul H.	Nev.	Dem.	Sept. 11, 1984	Oct. 1, 1990
96. STRENIO, Andrew J. Jr.	Md.	Dem.	Sept. 14, 1984	Dec. 31, 1985
97. PHILLIPS, Karen B.	Va.	Rep.	Aug. 11, 1988	
98. EMMETT, Edward M.	Tex.	Rep.	Nov. 21, 1989	
99. PHILBIN, Edward J.	Calif.	Rep.	Feb. 12, 1990	
100. McDONALD, Gail C.	Okla.	Dem.	Oct. 5, 1990	

² Recess appointment only, not confirmed.

³ Commissioner Simmons resigned as a Commission member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the Commission in September 1984 following his Presidential appointment and Senate confirmation.

INTERSTATE COMMERCE COMMISSION

Organizational Chart



APPENDIX B

COMMISSION WORKLOAD

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases Opened and Closed During Fiscal Year 1991.

Case Type	MOTOR MATTERS				
	Openings	Opposed	Closings		Total
			Unopposed	Dismissed Rejected/Withdrawn	
Rulemakings	8	11	2	0	13
Motor Property Licensing:					
Initial Common	4,376	6	4,222	177	4,405
Initial Contract	7,508	7	7,207	338	7,552
Extension Common	461	2	417	36	455
Extension Contract	443	0	387	46	433
Motor Passenger Licensing:					
Initial Common	587	3	600	11	614
Initial Contract	150	1	137	4	142
Extension Common	77	9	88	7	104
Extension Contract	8	0	8	0	8
Passenger Carrier Exit	3	3	0	0	3
Water Carrier Licensing	16	0	17	1	18
Freight Forwarder Licensing	130	0	119	2	121
Property Broker Licensing:					
Initial	3,343	6	3,364	44	3,414
Extension	22	0	20	3	23
Motor Carrier Complaints:					
Rate: Ex Parte MC-177	140	31	0	15	46
Interstate/Intrastate	2	2	0	0	2
Other	7	1	0	0	1
Restriction Removal	2	0	0	2	2
Investigation & Suspension	2	3	0	0	3
Motor Rate	29	32	8	1	41
Passenger Rate Review	8	8	0	0	8
Motor Carrier Finance	¹ 213	6	191	24	221
Small Carrier Transfer	712	0	666	57	723
Motor Finance Temporary					
Authority	54	1	45	11	57
Rate Bureau	0	1	4	0	² 5
Other Motor Matters	10	0	10	0	10
Total	18,311	133	17,512	779	18,424

¹ Includes 207 exemptions according to docket Ex Parte No. 55 (Sub-No. 57).

² The Commission granted final approval in seven proceedings and revoked the antitrust immunity in one other proceeding. The Commission also continued provisional approval in two proceedings, and modified conditions previously imposed in one other proceeding.

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases Opened and Closed During Fiscal Year 1991.—Continued

RAIL MATTERS				
Case Type	Decisions ⁴			
	Openings ³	Pending	Procedural	Substantive
Rulemakings	25	22	25	77
Abandonments:				
Non-NERSA ⁵	9	9	36	63
Conrail under NERSA	0	0	0	1
Exemptions ⁶	113	30	33	320
Rates:				
Complaints, Declaratory				
Orders, Investigations and				
Rate Bureau Activity	9	25	79	35
Investigations and				
Suspensions	1	0	0	3
Exemptions	1	1	0	0
Finance Docket:				
Exemptions ⁷	171	35	18	193
Other ⁸	27	22	45	57
Total	356	144	236	749

³ Excludes filings rejected by letter, reopenings and court remands.

⁴ Where a single decision has embraced proceedings, the decision is counted only once. Ministerial corrections, notices of court action, or miscellaneous notices are not included in these totals.

⁵ North East Rail Service Act.

⁶ Includes petitions and notices of exemption.

⁷ Includes petitions and notices of exemption.

⁸ Includes mergers and consolidations, feeder line acquisitions, arbitration review proceedings, petitions seeking declaratory orders, and other financial transactions.

TABLE 2.—Informal Proceedings.

	Fiscal Year 1989	Fiscal Year 1990	Fiscal Year 1991
Applications for motor temporary authority:			
Filed	3,976	4,173	4,965
Disposed of	3,986	4,126	4,874
Pending at end of year	160	207	298
Petitions in applications for motor temporary authority (received at ICC headquarters):			
Filed	2	3	3
Disposed of	3	3	3
Pending at end of year	0	0	0

Source: Office of Compliance and Consumer Assistance and Office of Proceedings.



TABLE 3.—Tariff Schedules, Fiscal Year 1991.

	Received	Criticized	Rejected
Freight:			
Common Carrier Tariffs:			
Rail	992,828	48	139
Motor	1,064,285	2,215	3,398
Water	37,497	24	282
Freight Forwarder	321	0	1
International Ocean-Land Intermodal . .	76,339	0	0
Total	1,278,270	2,287	3,820
Contract Carrier Filings:			
Rail Contracts	37,447	0	26
Rail Summaries	40,003	2,556	26
Total	77,450	2,556	52
Passenger Tariffs:			
Rail	8	0	0
Motor	2,340	127	81
Water	444	12	0
Total	2,792	139	90
Grand total	1,358,512	4,982	3,962

Source of Data: Bureau of Traffic statistical reports.

TABLE 4.—Action Taken on Proposals (Protested and Non-Protested) Considered for Suspension and/or Investigation.

	Suspensions—Fiscal Year 1991				Total
	Rail	Motor	Water	Pipeline	
Suspended	1	2	—	—	3
Not suspended but investigated	—	9	—	—	9
Not suspended or investigated	2	8	2	1	13
Petitions for reconsideration	1	2	—	—	3
Petitions for contract discovery	1	—	—	—	1
Fuel-related adjustments	—	270	—	—	270
Withdrawn	1	2	—	—	3
Total	6	293	2	1	302

Source of Data: Bureau of Traffic statistical reports.



TABLE 5.—Informal Rate Cases Branch (Bureau of Traffic—Fiscal Year 1991).

Rate cases general:		
On hand beginning of year		178
Received during year		5433
Disposed of during year		53817
Pending at end of year		230
Informal complaints and statements of claimed damages:		
On hand beginning of year		0
Received during year		6
Disposed of during year		4
Pending at end of year		2
Special docket cases:		
On hand beginning of year		46
Received during year		686
Disposed of during year		689
Pending at end of year		43

Source of Data: Bureau of Traffic statistical reports.



TABLE 6.—ICC Unit of the National Defense Executive Reserve (NDER).

NDER Group	Fiscal Year 1989 On Roll	Fiscal Year 1990 On Roll	Fiscal Year 1991 On Roll
Rail	328	275	240
Motor	86	69	51
Water	23	19	10

Source: Office of Compliance and Consumer Assistance.

TABLE 7.—Car Supply—Car Ownership, Installations, Retirements and Transfers, Orders, Class I Railroads.

	Fiscal Year			
	1976	1981	1986	1991
Ownership:				
Plain Box	291,851	160,766	83,815	40,820
Equipped Box	169,847	159,428	110,868	76,180
Total Box	461,698	320,194	194,683	117,000
Refrigerator	85,433	59,553	38,109	31,018
Gondola	172,008	143,111	106,226	87,024
Hopper	346,474	307,926	223,740	174,402
Covered Hopper	156,421	173,183	150,876	142,802
Flat	97,079	91,747	85,758	77,350
Other	34,347	26,022	17,126	9,203
Total Cars	1,353,406	1,121,736	816,518	638,889
Cars Installed:				
Box	5,221	1,103	0	30
Refrigerator	704	0	0	4
Gondola	4,036	3,776	56	571
Hopper	22,337	6,627	135	1,192
Covered Hopper	2,982	9,824	100	477
Flat	2,028	524	595	139
Other	0	1,166	0	0
Total Cars	37,308	23,020	886	2,413
Cars Retired or Transferred to Owners Other Than Class I Railroads:				
Box	29,531	35,375	28,517	9,165
Refrigerator	778	3,399	4,111	2,870
Gondola	8,182	12,374	6,793	3,155
Hopper	19,976	16,506	17,829	7,613
Covered Hopper	2,759	6,594	5,018	5,147
Flat	2,897	5,444	*-568	4,217
Other	3,117	2,082	1,958	1,265
Total Cars	65,684	81,774	63,658	27,122

TABLE 7.—Car Supply—Car Ownership, Installations, Retirements and Transfers, Orders, Class I Railroads.—Continued

	Fiscal Year			
	1976	1981	1986	1991
Cars Ordered:				
Box	7,348	282	0	30
Refrigerator	100	0	0	4
Gondola	3,170	2,173	3	1,386
Hopper	11,459	3,563	135	1,767
Covered Hopper	4,788	6,771	100	477
Flat	1,707	553	595	177
Other	4,920	1,075	0	0
Total Cars	33,492	14,419	833	3,841

*Negative retirement indicates increase in ownership in excess of new installations, resulting from reclassification or transfer of equipment, purchase or lease of used equipment, etc.

Source: Association of American Railroads.

TABLE 8.—Abandonments, Construction, and New Acquisitions and Operations.

	Fiscal Year 1989		Fiscal Year 1990		Fiscal Year 1991	
	Num- ber	Miles	Num- ber	Miles	Num- ber	Miles
1. Abandonments:						
Applications filed ¹	35	809	18	505	9	181
Granted	35	699	15	256	12	396
Denied	2	76	1	28	0	² 2
Dismissed	8	309	4	133	0	0
Dismissed because of sale . . .	4	84	1	1	1	10
Petitions for exemptions filed .	50	616	37	907	44	944
Granted	42	587	31	690	42	826
Denied	0	0	1	71	0	0
Dismissed	?	30	2	17	1	14
Dismissed because of sale . . .	0	0	5	65	1	5
Notices of exemption filed . . .	113	1,084	88	750	69	634
Granted	103	946	88	661	67	671
Dismissed	16	139	3	28	3	13
Dismissed because of sale . . .	0	37	0	0	1	6
2. Construction:						
Applications filed	1	1	1	3	1	40
Granted	1	1	0	0	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Petitions for exemptions filed .	2	9	7	10	1	5
Granted	2	8	3	7	4	3
Denied	0	0	0	0	0	0
Dismissed	2	2	0	0	0	0
3. Acquisitions and Operations						
Under 49 U.S.C. 10901:						
Applications filed	0	0	0	0	0	0
Granted	0	0	0	0	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Notices of exemption filed . . .	40	1,193	46	3,093	50	3,794
Granted	42	1,538	43	3,027	48	3,556
Dismissed	3	29	3	26	2	30

Due to a printing error, last year's Annual Report stated that for fiscal years 1988, 1989, and 1990, the number of applications filed were: 250, 235 and 218, respectively. The correct figures were: 50, 35 and 18.

Miles resulting from partial denial, case counted as a grant above.

This line segment was a portion of a line approved for abandonment. The case is counted as a grant above.

TABLE 9.—Intercarrier Financial Transactions.¹

	Fiscal Year 1989	Fiscal Year 1990	Fiscal Year 1991
1. Consolidations, Acquisitions			
Under 49 U.S.C. 11343:			
Applications filed	14	14	4
Granted	8	15	2
Denied	0	0	0
Dismissed	1	1	0
Petitions for exemption filed	26	12	22
Granted	28	10	26
Denied	0	1	0
Dismissed	0	2	0
Notices of Exemption filed	N/A	29	27
Granted	N/A	26	27
Dismissed	N/A	0	1
2. Trackage Rights:²			
Applications filed	16	9	0
Granted	6	5	7
Denied	4	0	0
Dismissed	0	1	1
Petitions for exemption filed	N/A	1	0
Granted	N/A	1	0
Denied	N/A	1	0
Dismissed	N/A	0	0
Notices of exemption filed	N/A	61	46
Granted	N/A	55	45
Dismissed	N/A	1	4
3. Leases:			
Applications filed	2	1	3
Granted	1	2	2
Denied	0	0	0
Dismissed	0	0	0
Petitions for exemption filed	16	3	6
Granted	12	5	3
Denied	0	0	0
Dismissed	1	1	0
Notices of Exemption filed	N/A	0	0
Granted	N/A	1	0
Dismissed	N/A	0	0

N/A = Not applicable.

¹ This table does not report mileages because mileages are not normally required for these transactions.² Includes formal applications and petitions for exemption for fiscal years 1988 and 1989. For fiscal year 1990, includes only formal applications.

TABLE 10.—Extension of Time Limits Under Section 10327(k)—Rail Proceedings, Fiscal Year 1991.

Proceeding	Type of Proceeding	Notification of Extension	Reason and Duration
No. 39886, National Starch and and Chemical Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al.	Complaint	April 26, June 20, July 22, February 17, 1991	56, 30, 60, and 60-day extensions to consider complex legal issues



TABLE 11.—Status of State Regulation of Intrastate Rail Rates.

CERTIFIED STATES

Ex Parte No. 388 Sub-No.	State	Date certification expires
1	Alabama	June 21, 1995
2	Arkansas	December 14, 1994
3	Colorado	July 24, 1996
5	Georgia	May 23, 1995
7	Illinois	September 20, 1994
9	Iowa	January 12, 1996
10	Kansas	September 26, 1995
11	Kentucky	April 5, 1996
13	Maryland	February 7, 1996
14	Michigan	February 10, 1996
15	Minnesota	April 6, 1996
16	Mississippi	February 22, 1995
17	Missouri	February 7, 1996
18	Montana	October 25, 1995
22	New Mexico	March 16, 1992
23	New York	December 22, 1995
24	North Dakota	February 2, 1996
26	Oklahoma	August 30, 1995
27	Oregon	January 21, 1992
29	South Carolina	September 26, 1995
33	Virginia	October 19, 1994
35	West Virginia	December 13, 1995
36	Wisconsin	September 23, 1995

TABLE 11.—Status of State Regulation of Intrastate Rail Rates.—Continued
STATES REGULATED DIRECTLY BY THE INTERSTATE COMMERCE COMMISSION

Ex Parte No. 388 Sub-No.	State	Effective Date
N/A	California	May 11, 1982
N/A	Connecticut	May 11, 1982
N/A	Delaware	May 11, 1982
4	Florida	October 1, 1985
6	Idaho	October 23, 1984
8	Indiana	June 22, 1987
12	Louisiana	May 2, 1986
19	Nebraska	January 6, 1986
N/A	Nevada	May 11, 1982
20	New Hampshire	February 26, 1990
21	New Jersey	October 4, 1983
N/A	North Carolina	May 11, 1982
25	Ohio	October 29, 1984
28	Pennsylvania	June 14, 1983
30	Tennessee	March 17, 1990
31	Texas	May 20, 1984
32	Utah	March 7, 1986
34	Washington	June 14, 1991
37	Wyoming	February 22, 1983
38	Alaska	July 3, 1985

N/A = Not applicable.

UNREGULATED STATES

State	Effective Date
Arizona	May 11, 1982
Hawaii	May 11, 1982
Maine	May 11, 1982
Massachusetts	May 11, 1982
Rhode Island	May 11, 1982
South Dakota	May 11, 1982
Vermont	May 11, 1982
District of Columbia	May 11, 1982

APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. The Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. To place orders or for price information, contact:

Superintendent of Documents
Government Printing Office
Washington, DC 20402
Telephone (202) 783-3238

Publications without an asterisk may be obtained free of charge (while supplies last) by writing to the ICC office listed after the title. For reference, they are:

- Office of Compliance and Consumer Assistance (OCCA)
Interstate Commerce Commission
Washington, DC 20423
- Office of Economics (OE)
Interstate Commerce Commission
Washington, DC 20423
- Office of External Affairs (OEA)
Interstate Commerce Commission
Washington, DC 20423
- Office of the Secretary (SE)
Interstate Commerce Commission
Washington, DC 20423
- Office of Public Assistance (OPA)
Interstate Commerce Commission
Washington, DC 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Office of Economics' Public Reference Room (Room 3378) from 8:30 a.m. to 5:00 p.m. Photocopies of these reports, at a cost of 60 cents per page, with a \$5.00 minimum charge per order, may be obtained by writing to the Office of the Secretary, Room 1211A, ICC, Washington, DC 20423. Telephone (202) 927-5998.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to one year from the date of service from Dynamic Concepts, Inc. (DCI), Room 2229, ICC, Washington, DC 20423, or by calling (202) 289-4357 or (202) 289-4359. Printed reports in the "ICC 2nd Series" are available through DCI.

CONSUMER PUBLICATIONS

OCP-100 When You Move: Your Rights and Responsibilities—OCCA

This booklet explains consumer rights when moving household goods across state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress—OEA

Years available:

98th Report (1984)
102nd Report (1988)
103rd Report (1989)
104th Report (1990)
105th Report (1991)

*Code of Federal Regulations, Title 49, Revised to October 1991**

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures.

Parts 1200-End: Uniform system of accounts, preservation of records, reports, valuation, handling of national security information and classified material, passenger and freight tariffs and schedules, and credit regulations.

Interstate Commerce Act

Available from West Publishing Company, Post Office Box 64833, St. Paul, MN 55164, in Title 49 U.S. Code, Sec. 10101 et seq.

ICC Register

A daily summary of Commission decisions, notices and motor carrier applications. Subscription information is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Abandonments and Alternatives to Abandonments: Overview—OPA (April 1991)

Before You Start a Small Railroad: A Brief Overview of Things to consider—OPA (September 1988)

Environment: Guide to the Interstate Commerce Commission's Environmental Rules—OE (December 1991)

Federal and State Regulations Concerning Interstate Motor Operations: Overview—OPA (September 1991)

Illegal Lumping—OPA

Lease-Purchase Plans—OPA

Listing of Minority and Female Motor Carriers—OPA (March 1990)

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982—OPA

Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act—OPA (August 1990)

Small Carrier Transfer and Name Change Procedures—OPA (December 1988)

So You Want to Start a Small Railroad—ICC Small Railroad Application Procedures—OPA (April 1990)

Staff Report No. 12—Highlights of Activity in the Property Motor Carrier Industry—OE (January 1990)

"Transportation: Trucking Services" as appearing in U.S.C. Industrial Outlook—OE (1991)

Inspector General Reports

Photocopies of Audit Reports and semiannual reports are available at a cost of 60 cents per page, with a \$5.00 minimum charge per order, from the Office of the Secretary, Room 1211A, ICC, Washington, DC Telephone: (202) 927-5998.

Speeches and Statements—OEA

ICC Commissioner's speeches or statements before Congressional committees may be obtained on an individual basis, when available, from the Office of External Affairs, Room 4136, ICC, Washington, DC 20423. Telephone (202) 927-5340.

SPECIALIZED PUBLICATIONS

Motor

Transport Statistics in the U.S. Motor Carriers—OE

(First Release, Part 2, 1990)

(Second Release, Part 2, 1990)

The Commission's Office of Economics publishes quarterly reports on selected earnings data—OE

- *Large Class I Motor Carriers of Property*
- *Large Class I Motor Carriers of Passengers*
- *Large Class I Household Carriers*

Rail

Class I Line-Haul Railroads, Selected Earnings Data—OE (Quarterly)

Rail Rates Experience Multi-Year Decline—OE (May 1991)

A Survey of Shipper Satisfaction with Service and Rates of Shortline and Regional Railroads—Joint Staff Study—EO (August 1989)

Effects of the Boxcar Exemption—OE (November 1988)

Report of Railroad Employment Class I Line-Haul Railroads—OE

Coal Transportation and the Staggers Rail Act of 1980—OE (October 1990)

Transport Statistics in the U.S., Railroad Companies—OE (1990)

Wage Statistics of Class I Railroads in the U.S.—OE

URCS—Uniform Railroad Costing System, Phase II, Movement Costing Programs User's Manual—Description of the independent interactive computer program for estimating cost of specific, individual rail movements.—OE (May 1990)

URCS—Uniform Railroad Costing System, Phase II, Movement Costing Program technical Manual—Description of Fortran costing programs compatible to Digital Equipment Corporation and IBM equipment.—OE (December 1989)

APPENDIX D

Appropriations and Employment

The following statement shows average full-time employment and total appropriations for the fiscal years 1957 to 1991 for activities included under the current appropriation title "Salaries and Expenses".

Fiscal Year	Appropriation	Average Employment	Fiscal Year	Appropriation	Average Employment
1957...	14,879,696	2,090	1975...	44,970,000	1,986
1958...	17,412,375	2,238	1976...	52,455,000	2,034
1959...	18,747,800	2,268	TQ	12,290,000	2,113
1960...	19,650,000	2,344	1977...	60,786,000	2,084
1961...	21,451,500	2,386	1978...	65,575,000	2,040
1962...	22,075,000	2,400	1979...	70,400,000	2,040
1963...	23,502,800	2,413	1980...	79,063,000	1,946
1964...	24,670,000	2,408	1981...	82,400,000	1,852
1965...	26,715,000	2,339	1982...	70,150,000	1,540
1966...	27,540,000	2,376	1983...	65,600,000	1,319
1967...	27,169,000	1,929	1984...	60,000,000	1,158
1968...	23,846,000	1,899	1985...	51,100,000	915
1969...	24,664,000	1,808	1986...	48,408,000	806
1970...	27,742,660	1,802	1987...	46,802,000	732
1971...	28,442,000	1,731	1988...	44,294,000	712
1972...	30,640,000	1,676	1989...	43,115,000	699
1973...	33,720,000	1,765	1990...	44,205,000	665
1974...	40,681,000	1,874	1991...	43,777,000	630

Source: Appropriation data; Annual Appropriation Acts. Average Employment; Commission's report to OPM, SF 113-G.

Status of Appropriations

Status of fiscal year 1991 appropriations as of September 30, 1991.

Salaries and expenses:	
Total appropriations	\$43,777,000
Reimbursements	331,664
Balanced Budget and Emergency Deficit Control Act of 1985 Reduction	(569)
Total obligations	44,053,932
Unobligated balance lapsing	54,163
Directed Rail Service:	
Unobligated balance available from prior appropriation	—0—
Total obligations—Payments to carriers	—0—
Recoveries of prior years obligations	—0—
Unobligated balance available (end of year)	—0—

Receipts

Status of receipt accounts as of September 30, 1991.

Registration and filing fees	\$6,399,364
Fines, penalties, and forfeitures ..	282,542
Service charges for allotments of pay for savings account	—0—
Charges for administrative services	59,568
Recoveries from railroad loan guarantees	—0—
Miscellaneous recoveries and refunds	8,494
Withholding for military benefits ..	—0—
Interest and penalties for late payments	59
Total Receipts	\$6,750,027

Source: Commission's Accounting System.

APPENDIX E

Carrier Financial and Statistical Data

TABLE 1.—Carriers regulated by the Commission.

	Number
Carriers subject to Uniform System of Accounts and/or required to file annual & periodic reports as of October 1, 1991:	
Railroads, class I	14
Motor Carriers, class I passengers	30
Motor Carriers, class I property	863
Motor Carriers, class II property	1,148
Total	2,055
Carriers and organizations not required to file reports as of October 1, 1991:	
Railroads, class I	2
Railroads, class II (line-haul)	25
Railroads, class III (line-haul)	330
Railroads, other	196
Carlines (companies that furnish cars used on rail lines)	166
Holding companies—rail	3
Holding companies—motor	74
Motor carriers of passengers, other than class I	4,174
Class I and II motor carriers of property relieved from reporting	204
Class III motor carriers of property	44,174
Water carriers	3517
Freight forwarders	597
Rate bureaus and organizations	71
Coal slurry pipeline company	1
Protective services companies	6
Total	50,374
Grand total	52,429

NOTE: Railroad companies, motor carriers of passengers, and motor carriers of property are classified based on gross annual operating revenues at specified levels for three consecutive years. The revenues are adjusted by a deflator factor to eliminate the effects of inflation. The inflation factor for railroad companies is based on the annual average Railroad Freight Price Index. The inflation factor for motor carriers of property is based on the annual average Producers Price Index for all commodities. The inflation factor for motor carriers of passengers is based on the Producers Price Index of finished goods. The following table contains the unadjusted revenue levels for each transportation mode and the respective 1990 deflator factor for each mode used to classify carriers for accounting and reporting purposes:

CARRIER	DEFLATOR	CLASSIFICATION THRESHOLD
Railroads	.5298	Class I—\$50 million or more Class II—Between \$10 million and \$50 million Class III—\$10 million or less
Motor carriers of property	.7721	Class I—\$5 million or more Class II—Between \$1 million and \$5 million Class III—Less than \$1 million
Motor carriers of passengers	.9192	Class I—\$5 million or more Class II—Less than \$5 million

TABLE 2.—Class I line-haul railroads shareholders' equity, long-term debt and dividends (dollars in thousands).

Item	1988	1989	1990
1. Shareholders' equity:			
a. Capital stock.	\$2,939,236	\$2,716,399	\$2,734,154
b. Capital surplus	6,528,872	6,144,234	5,515,191
c. Retained income.	17,053,325	16,892,165	15,413,231
d. Total equity.	26,521,433	25,752,798	23,662,576
2. Long-term debt.	8,287,377	9,256,144	9,479,213
3. Total equity and debt.	34,808,810	35,008,942	33,141,789
4. Ratio of debt to total equity and debt (%)	23.81	26.44	28.60
5. Amount of dividends.	\$1,813,877	\$1,911,040	\$2,076,531

TABLE 3.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands).

Item	1988	1989	1990
1. Number of carriers represented	17	15	14
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight	\$27,154,961	\$27,058,765	\$27,470,520
b. Passenger	84,677	90,697	93,861
c. Total operating revenues . .	27,999,839	27,955,959	28,369,803
3. Total operating expenses	24,889,015	25,037,666	24,651,542
4. Net railway operating income . .	1,967,612	1,895,262	2,648,258
5. Ordinary income	2,270,307	2,009,094	1,961,127
6. Extraordinary items—net ¹	106,440	193,714	16,284
7. Net income	2,376,747	2,202,808	1,977,411
NET INVESTMENT AND EQUITY			
8. Net investment in transportation property and equipment plus working capital ²	36,761,080	36,850,743	37,203,643
9. Shareholders' equity	26,521,433	25,752,798	23,662,576
FINANCIAL RATIOS (PERCENT)			
10. Operating ratio (L3/L2c)	88.89	89.56	86.89
11. Return on net inv. (L4/L8)	5.35	5.14	7.12
12. Return on equity:			
a. Ordinary income basis (L5/L9)	8.56	7.80	8.29
b. Net income basis (L7/L9) . .	8.96	8.55	8.36
EMPLOYEE DATA			
13. Average number	236,891	227,548	216,424
14. Compensation:			
a. Total	\$9,306,857	\$9,043,221	\$8,654,186
b. Per hour paid for	15.640	15.762	15.827

¹ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

² Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the Commission in Ex Parte No. 393 (Sub-No. 1), Standards for Railroad Revenue Adequacy, served December 31, 1986.

TABLE 4.—Class I line-haul railroads current assets and current liabilities as of December 31, 1989 and 1990 (dollars in thousands).

Item	1989 amount	Percent ¹ of change	1990 amount	Percent ² of change
1. Cash and temporary cash investments.	\$1,062,858	-40.4	\$929,873	-12.5
2. Materials and supplies	898,772	-3.1	902,723	0.4
3. Total current assets	6,739,418	-20.2	5,699,421	-15.4
4. Total current liabilities	8,854,250	2.3	9,204,399	4.0
5. Net working capital:				
a. Including materials & supplies	(2,114,832)	—	(3,504,978)	—
b. Excluding materials & supplies	(3,013,604)	—	(4,407,701)	—
RATIOS				
6. Current assets to current liabilities:				
a. Including materials & supplies	0.76		0.62	
b. Excluding materials & supplies	0.66		0.52	
7. Cash and temporary cash investments to current liabilities	0.12		0.10	

¹ Represents percent change from prior year 1988.² Represents percent change from prior year 1989.

Table 5.—Class I motor carriers of property condensed income statement, financial ratios and employee data (dollars in thousands).

Item	1988	1989	1990
1. Number of carriers represented ¹ . . .	674	681	728
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight-intercity-common carrier	\$32,490,30	\$34,827,532	\$36,974,285
b. Freight-intercity-contract carrier	3,914,241	4,662,542	5,211,767
c. Freight-local cartage	227,309	544,324	791,732
d. Intercity transportation for other motor carriers	194,881	179,553	185,612
e. Other operating revenue	2,997,620	393,430	529,328
f. Private carriage & CIH revenues ²	N/A	508	N/A
g. Household goods revenues ²	N/A	2,845,968	3,026,208
h. Total operating revenues	39,824,356	43,453,857	46,709,932
3. Operating expenses	38,117,479	41,847,628	44,827,137
4. Lease of distinct operating unit—net ²	39	N/A	N/A
5. Net carrier operating income	1,706,916	1,606,229	1,882,795
6. Other income and miscellaneous deductions from income—net	(267,913)	(375,934)	(408,530)
7. Income taxes on ordinary income ³	375,166	447,190	486,762
8. Ordinary income	1,063,837	783,105	987,503
9. Extraordinary items—net ⁴	(35,174)	42,801	9,303
10. Net income	1,028,663	825,906	996,806
NET INVESTMENT AND EQUITY			
11. Net investment in carrier operating property and equipment plus working capital	10,937,750	12,063,523	12,392,086
12. Shareholders' and proprietors' equity	7,963,269	9,476,920	9,850,799
FINANCIAL RATIOS (PERCENT)			
13. Operating ratio (L3/L2h)	95.71%	96.30%	95.97%
14. Return on net investment (L5/L11)	15.61%	13.31%	15.19%
15. Return on equity (L10/L12)	12.92%	8.72%	10.12%
EMPLOYEE DATA			
16. Average number	560,332	602,903	607,098
17. Compensation	\$15,399,887	\$16,563,138	\$17,735,343

N/A = Not applicable.

¹ Carriers for which data was complete and available at publication. Data has not been audited by the Commission.² Comparative data not available due to report form changes.³ Does not include income taxes applicable to sole proprietorships, partnerships and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.⁴ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 6.—Class I intercity motor carriers of passengers condensed income statement, and financial ratios (dollars in thousands).

Item	1988	1989	1990
1. Number of carriers represented ¹	21	21	21
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Passenger intercity schedules	\$751,643	\$892,508	\$738,487
b. Local and suburban schedules	9,784	5,237	4,143
c. Charter or special service . .	144,841	170,635	90,200
d. Other operating revenues . .	141,930	144,757	110,438
e. Total operating revenues . .	1,121,704	1,213,137	943,268
3. Operating expenses	1,059,068	1,141,538	1,026,213
4. Net carrier operating income . .	62,636	71,599	(82,945)
5. Income tax on ordinary income ²	2,635	2,713	1,317
6. Other income/deductions	(53,724)	(61,729)	(41,027)
7. Extraordinary items—net ³ . . .	(6,477)	(67)	(55,053)
8. Net income	(200)	7,090	(180,342)
EQUITY			
9. Shareholders' equity	117,163	118,058	7,411
FINANCIAL RATIOS (PERCENT)			
10. Operating ratio (Line 3/Line 2e) . .	94.42	94.10	108.79
11. Return on equity (Line 8/Line 9) .	—	6.01	—

NOTE: The large declines in revenues, earnings and certain other data in 1990 compared to 1989 are attributable to the adverse effects of a strike at Greyhound Lines, Inc., which began on March 2, 1990. The large increase in extraordinary items is attributable to reorganization costs incurred by Greyhound in connection with its filing for bankruptcy on June 4, 1990, pursuant to Chapter XI of the Federal Bankruptcy Code.

¹ Carriers for which financial and statistical data were available. Data was not audited by Commission.

² Does not include taxes applicable to sole proprietorships, partnership and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.

³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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